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STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

ORGANIZATION

*(ontario)*

WEDNESDAY, NOVEMBER 25, 1987





STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

CHAIRMAN: Fleet, David (High Park-Swansea L)

VICE-CHAIRMAN: Beer, Charles (York North L)

Cleary, John C. (Cornwall L)

Fawcett, Joan M. (Northumberland L)

McCague, George R. (Simcoe West PC)

Pollock, Jim (Hastings-Peterborough PC)

Pouliot, Gilles (Lake Nipigon NDP)

Ruprecht, Tony (Parkdale L)

Smith, David W. (Lambton L)

Sola, John (Mississauga East L)

Swart, Mel (Welland-Thorold NDP)

Substitution:

Pelissero, Harry E. (Lincoln L) for Mrs. Fawcett

Clerk: Manikel, Tannis

Staff:

Kaye, Philip J., Research Officer, Legislative Research Service

Mifsud, Lucinda, Legislative Counsel



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Wednesday, November 25, 1987

The committee met at 10:13 a.m. in committee room 2.

ORGANIZATION

Clerk of the Committee: It is my duty to ask you to elect a chairman. Are there any nominations?

Mr. Ruprecht: Yes. I have the distinct pleasure to nominate one of our distinguished colleagues who is going to--

Mr. Swart: Thank you.

Mr. Beer: The only distinct one.

Mr. Ruprecht: Just because I said we have to stand up when you arrive does not mean you will be chairman now. The name I would like to put forward is David Fleet, the member for High Park-Swansea.

Mr. Swart: Seconded.

Clerk of the Committee: Mr. Fleet has been nominated. Are there any further nominations. Seeing none, Mr. Fleet, will you please take the chair?

Mr. Chairman: Thank you very much. I think the first thing I should do is to immediately call for the election of a vice-chairman.

Mr. Ruprecht: I also have the distinct pleasure to nominate a person who has been in these famous halls for a very long time and who knows every nook and cranny of this place. I have the distinct pleasure to nominate Charles Beer as vice-chairman.

Mr. Chairman: Is the nomination seconded? All in favour? Well done. Congratulations.

Mr. Beer: But I can stay here?

Mr. Chairman: Yes, you do not have to move.

I understand that we require a motion regarding transcripts.

Mr. Pelissero: I move that, unless otherwise ordered, the transcripts of all committee hearings be made.

Mr. Chairman: So moved. All in favour? Opposed? Done.

With respect to the next item, a review of the budget, you will see quite a number of materials before you. They have been prepared by some of the people who are sitting beside me, and I think it would be appropriate that we have formal introductions, perhaps starting with you, Phil.



Mr. Kaye: I am Philip Kaye. I am a lawyer with the legislative research service, which is part of the legislative library. I have served as the committee's research officer for the past year and a half.

Clerk of the Committee: I am Tannis Manikel, clerk of the committee. I am here to assist members in any way possible and to try to keep the meetings running as smoothly as possible and organize them ahead of time.

Miss Mifsud: I am Lucinda Mifsud, legislative counsel. I am your counsel in terms of the private bills part of your duties.

Mr. Chairman: The materials that are here are a result of the hard work of the three individuals who have just introduced themselves. I am indebted to them, in some cases, for initiating it themselves by drawing my attention to the materials. The objective in providing all these materials and how it relates to the budget is that I anticipate the committee may desire to proceed in a somewhat different way than I understand the committee to have done in the past.

There are two completely different functions of the committee: first, to deal with a kind of watchdog review of regulations that have come through the government, essentially from a technical point of view, and, second, to deal with a detailed review of private bills.

The budget itself that has already been approved previously, which I understand has to be approved again through the system, has largely not been spent. The budget figures are set out and you will see them in the materials, but Tannis has already provided, in addition to an excerpt from the standing orders, a bit of an explanation about what the committee would anticipate doing.

In addition, I have requested that the increases over the prior budget be set out so that you have some sense of why the increase is so significant. In fact, it is not so much that this one is higher, but that the previous budgets did not really reflect the same level of activity. The bottom line is that, I suppose subject to approval by the Board of Internal Economy, I am suggesting that this committee will want to contemplate having a meeting during recess, probably to deal substantially with regulations, perhaps even exclusively with regulations, potentially having witnesses come in to advise the committee.

You will see from the list of materials we have here that there is an agenda set out for starting next Wednesday. Ordinarily, as I understand it, there is a week's notice of what will come up at the next meeting on private bills. In the last year, I understand that they have focused almost solely on private bills. That is really where the work was. There are delegations and they come in to deal with the bills.

The next item you see is where some of the expenditures have taken place, but then you will see a background paper on this standing committee, and I commend the clerk for that. It is comprehensive and I found it quite easy to read. It sets out some of the different things that have to be considered by the committee and some of the functions. Then for background materials you will see something called Private Bills in Ontario: Information Circular. That is in fact what is handed out to applicants on private bills.



You will see that there is a memorandum; in fact, there are a number of memorandums from Phil dealing with essentially regulation-type issues. After that, you will see a couple of articles by a gentleman by the name of Revell. One of them deals with the process of rule-making, and it is more comprehensive than what this committee does. At the top the document I am now referring to it says "Gazette," and what that document sets out in a somewhat dated version, because it is from 1982, is a general review of how regulations come into being, going through the cabinet process.

There is, for instance, a cabinet committee that deals with all regulations prior to approval by cabinet. I understand that something in the order of 25 per cent of all regulations do not go through that process. They go through an agency, board or commission. That is the way regulations will come forward. This is particularly for the members who are newly elected like myself. By the time a regulation gets to be this committee's function, this committee does not really rule on the substantive issue of whether it is a good regulation in terms of its merit but does look at a host of factors as to technical compliance.

1020

The factors that are set out in standing orders are defective, in my view, if for no other reason than they do not require the regulations to comply with the Charter of Rights and Freedoms. There are a number of things that should be changed, and I think it is quite appropriate for this committee to review the standing orders, whether there should be a capacity to look at the merits of the regulations or whether there should not, and generally deal with the questions of the form. In terms of the public, the primary concept, and the one where I would suspect we would have experts coming in, would deal with what is called "Notice and Comment."

Presently, as you will see from reading the article by Revell, there is a relatively minor degree of public input before a regulation comes into being. Whether or not that is appropriate, it is a practical matter. The regulations are not much observed or examined by anybody, even after they are published, in terms of whether they should be there. As a practical matter, the counsel for the committee does take a look at them. I take it that is because, first, he is more qualified than the committee and, second, it bores the committee members to tears if they try to go through it all.

That would certainly be my conclusion because there are hundreds that come out every year. That is kind of a watchdog in a sense but, given the fact that in the last three years I think we have only had one report submitted, even the House does not hear very much about what that process involves. There are two backlogged reports that presumably we could put out fairly quickly.

The second article on private legislation by Revell outlines the process through which people will go if they want to get something accomplished. It is a little bit more recent an article, and I found it fairly useful just for understanding the process better. There is also the Regulations Act and a copy of section 22 of the Interpretation Act which deals with the process of regulations.

I have gone through that with you in part just so that you have some sense of why the budget is drawn up the way it is. I cannot honestly tell you what the Board of Internal Economy may consider is an appropriate level, but I suggest that this is not an unreasonable one, given that reform in a major way on the question of regulations has been really done since about 1969.



There have been some recommendations made in a 1986 report, and I think the 1986 report is in here. It sets out a number of issues, and you will see under point number four discussion for this agenda, "Discussion of Committee's Agenda." That is what is in my mind as to be possible discussion today.

Mr. Beer: On the budget, then, what we have here, the \$62,410, was that approved previously or is that new?

Mr. Chairman: That is new. I think the previous level was around \$26,000. That is why I am going through this at some length, so you can understand it.

One of the things, for instance, that this budget reflects is a somewhat higher level of payment to the counsel, Mr. Dekany. I have spoken to him relatively briefly and he tells me his legal aid rate is \$75.00 an hour and the committee has been paying him \$65.00 an hour. Anybody with even a passing familiarity with the normal fees for solicitors knows that this recommended rate that we might be putting through at \$85 is about half what he would be entitled to in the open market.

Mr. Swart: I wonder if I could make one or two comments. I have previous commitments. I will be away for a while and I must leave almost immediately.

I was on this committee back a number of years ago for one term and things perhaps have changed since then, but at that time I did not feel we were very effective in vetting the regulations. We dealt with only a very few of them and many of them have not been checked, unless it was done recently, for any of those years. We have to look at some new kind of formula. If the committee is going to do the job, if the regulations are going to be examined so that they are in conformity with the act, I think we may have to look at a new method of doing it.

The second point I wanted to make relative to your comments was that, of course, whether this committee sits in the recess will depend on the decision made by the House leaders and by the Legislature. There are a lot of committees. I think perhaps this recess there will be more committees sitting than ever before. It may prove pretty difficult to man all those committees and there has to be some priority given to them.

If there is a feeling among this group that we should sit during the winter, passing a recommendation here is one way of doing it, or we can go back to our respective House leaders and determine from them whether they have sat on priorities and whether they feel we should sit during the wintertime. My feeling is that perhaps we should go back to our respective caucuses and discuss this matter before we make that determination.

Mr. Chairman: I appreciate your comment in terms of the need to look for reform, but my sense of it is that, as a practical matter, I am better off getting the request for the time, given how long we have before the House is likely to rise. Then I will go back and negotiate it among the other priorities.

Indeed, I am sensitive to the fact that even if we get permission, it will have to be a practical scheduling. The way the budget is structured, we do not have to spend the money if we do not meet, but we will need to get the budget through in order to get the witnesses here even if we have them while the session is on.



We do not have to deal with regulations and the question of reform as a distinct block. We can do it an hour every week if we want. I think it might be more productive to do it all at one time. That is my own impression, but I do not have any fixed views about that and I am open on it.

By making the request at this level now, I can go back to my House leader. I am sure he will discuss it with the other House leaders because we would have to get permission by resolution in the House in order to meet between sessions.

Mr. Swart: I do not feel strongly about which way it is done.

Mr. Chairman: But I agree that it has to be sorted out.

Are there any other questions with respect to the budget?

Mr. McCague: Given that you are the fellow who has to sell this to the Board of Internal Economy, I am quite happy to let you go and try and, therefore, I would commend this budget to you to discuss with the board. I guess that is step number one. You cannot meet if you have not got the money, so you must do whatever is necessary, Mr. Chairman.

The second point is that I do not think that we should stifle any good intentions the chairman has in regard to taking a better look at regulations. How we do that I am not sure. Probably in the interim the chairman can find out from the regulations cabinet committee as it presently exists whether anything we would do here would be of any particular value. I think that is what we would have to do. We would have to have our comments ready for the regulations committee of the government for its consideration as it is making its recommendations to cabinet. That is the way we could get into the system at the present time, and we might not want to do that.

I think the direction in which you are aiming is to set up a whole new process for regulations. I guess an all-party committee and that sort of thing is what you are talking about, with the same kind of representation as we have here in regard to size. I do not know, but I presume that what you are saying is that we should meet in a week or whatever length of time it takes in the interval to decide what kind of process we might recommend to the Legislature.

1030

Mr. Chairman: In terms of the process of regulatory review and reform, there is none in practical terms. Nobody or no group of people on an ongoing basis deals with it as far as I can discover. It seems to me the ball is in our court if we want to pick it up. You are quite right that, for instance, we are not going to have many witnesses if we have no budget. That is one of the reasons why I would like to get this thing through now so that at least I can get it to the Board of Internal Economy early enough to know what our options are.

I do not think there are any downsides or other suggestions about perhaps involving the cabinet committee on regulations, but my understanding of what it intends to do does not include what I am suggesting the committee may want to do now.

Mr. Beer: Can you just elaborate on the cabinet committee's function. Perhaps Mr. McCague will comment as well on what the cabinet committee on regulations does and, historically, what this committee has done.



It seems to me that reviewing how the regulations are developed, presented and so on is something that would be a useful review for an all-party committee, but are we going to be stumbling over other people who are doing a similar thing?

Mr. Chairman: No. As far as I can determine, nobody else is even thinking about what I am suggesting. The process ordinarily is that if the ministry wants the regulation, it takes it to the registrar of regulations, which is where Miss Mifsud works. There is a staff there, I think, in the area of 40 people.

Miss Mifsud: Yes.

Mr. Chairman: They will hassle it out if there is a problem from some technical point of view and it will go forward either with or without, literally, a seal from the registrar of regulations to a committee.

Mr. Beer: That is a committee of cabinet.

Mr. Chairman: A committee of cabinet. Historically it went into cabinet and there was some point at which the cabinet ministers decided that it did not make any sense and that there was no time to deal with all these minor regulations. The volume was very high, so they created a committee that vets them. It is there that the ministry staff will make a presentation under the current structure. It is chaired by a member of cabinet. The members of the committee are not necessarily cabinet ministers but they are members of the government caucus.

Mr. Beer: Is that what has been done for a number of years?

Mr. Chairman: I do not know how many years the committee has been in existence but it must have been quite some time.

Mr. McCague: Thirteen at least.

Mr. Chairman: The process is that they will look at it with a political perspective; in other words, they will look at the merits of what is coming forward and they should at least ask themselves, "Is this what we want to do?"

If there is a technical problem, if for instance the registrar of regulations says, "The ministry wants to do something but I do not think the statute permits this," then that will also be considered at that level. But how they make their decision and what the committee thinks about it is not public in any way. It will then go from there to cabinet. Cabinet will make a decision if it wants to go ahead with whatever it is. I presume if it does not get through a cabinet committee, it does not go to cabinet. I suppose in theory it might; some minister might choose to somehow do that if he can get it on to the cabinet agenda.

Once it comes out of the cabinet, that is it. They simply issue it. It gets gazetted and somewhere down the road we have the counsel for this committee, Mr. Dekany currently, who will look at all of the factors or set out the standing orders which are, if I can put it this way, nonmeritorious. It does not look to whether the government ought to be issuing it.

At that stage the review that takes place can be contained in a report from this committee to the House. What happens as a practical matter is that

Mr. Dekany speaks with the registrar of regulations and he will also speak for any areas he is concerned about with various ministry officials and ask them to either change it or explain their position. They can either do that or they can say, "We will get back to you." I take it that in some cases probably Mr. Dekany is still waiting for the ministry to get back to him.

In any event, if it gets reported to the House, the House can then choose what it wants to do. Frankly, I have not been able to find anybody telling me that the House has ever thought about doing anything, let alone acted in terms of a report. It seems to me there is an awful lot of wasted time and effort in the current process. It is rather meaningless.

At the same time, the watchdog function of the committee really is as important as the whole opposition is in the House in respect of legislation. The theoretical function of this committee is as critical as the standing committee on public accounts. Therefore, it is a matter that quite frankly probably does not work as well as it ought to. That is my view and I take it that is Mr. Swart's view and perhaps that of others on this committee.

I do not pretend at this time to be able to tell anybody exactly what we would want to do, but you will notice that I have instigated creation of an issues-for-consideration list that deals with quite a number of issues. I would essentially be taking that forward, if we get this thing through here, to the Board of Internal Economy.

My sense of the work load that comes through the cabinet committee--Mr. McCague has raised it--is such that I do not think it is going to be doing this kind of review. If they do, that is wonderful, but I am not sensing that they will do it. It may well be, and I think this is a very good suggestion, that at some point we will want to have a talk with them, dovetail with them and get their input. Maybe we can get them to come and make a representation to this committee about things we are thinking about. That would be an excellent idea. Mr. McCague and Mr. Ruprecht will also be able to provide input in terms of their experience.

I will be willing to entertain a motion with respect to the budget.

Mr. McCague moves, seconded by Mr. Beer, that the budget in the amount of \$62,410 be approved and that the chairman be authorized to present the budget to the Board of Internal Economy.

Motion agreed to.

Mr. Chairman: I think I will also need a companion motion that we request the House permit this committee to meet between sessions.

Mr. Beer moves, seconded by Mr. Cleary, that the committee request the House to permit the committee to meet between sessions.

Motion agreed to.

Mr. Chairman: Item 4 on the agenda is simply a discussion. I have provided an overview. I have also obviously attempted to provide as much written material as possible to the members, which I frankly am not anticipating we will get all the way through today. Indeed, it may take some time to absorb it all. I have covered at least a number of the points that show up on the list of issues.



One thing I would like to deal with, though, is the time of this committee meeting. I personally am prepared to come at 9 a.m. or 9:30 a.m. I do not know how practical that is for other members. It is on a Wednesday and therefore is not likely to be like a Monday afternoon or something when people are coming in from out of town. Presumably, people are within driving distance.

I understand that the committee gets quite jammed up for time. Personally, I would like to see us be able to create enough time to deal with regulations. If we do not create the time to deal with it, I take it from the advice I am hearing that we will not get to it because private bills can be quite time-consuming.

Mr. Beer: A number of the members are not here. Being conscious particularly of the problems the two opposition parties have where there are so many other committees, I think it would be very important to solicit everybody's view individually to find out. For my purposes, I could meet earlier but I know it must be very difficult balancing time. I think we want to try to make it as convenient as possible for everyone, but particularly for the opposition members.

1040

Mr. Chairman: I think that is a fair comment. Are there any other views?

Mr. McCague: Along those lines, Mr. Beer is exactly right. Anything other than 10 a.m., at least until the end of the year, would be very difficult for Mr. Swart and myself. I think it could be reviewed. I certainly have no objection to nine o'clock if we are meeting when the House is not sitting but we both have duties at nine o'clock until 10 o'clock.

Mr. Chairman: I think that is an understandable problem. Certainly between sessions my sense is that we would tend to have longer and more intensive days, but the sheer number of days involved would be minimized. I am sure people do not want to trip down once a week for a period of time when they do not have to. We can probably deal with it in blocks of time and try to schedule as much in as we can.

Mr. McCague: You might learn differently on that point.

Mr. Chairman: I am certainly prepared to bow to the wisdom of vast experience, Mr. McCague. I have no illusions about that. I am finding there are a lot of things I think twice about once I get here. However, that being said, I will put that part aside.

Is there anything anybody wants to raise with me or with other members of this committee from this list? I have set that out. There is no magic to what is there if somebody wants to tell me something now or even down the road to add to it. The discussion on regulations I guess really is in a suggested order of importance. I would think for instance that including a reference in the standing orders about the Charter of Rights and Freedoms is something that by now would be an axiom of what we do. I understand the counsel in fact does do that as a practical matter in addition.

Mr. Beer: From a practical point of view, I would think for me this is all going to be new and I think very valuable, in particular to those of us who are new members. In terms of time, I notice that next week we have four private bills to review. In the case of each of these bills, does that mean

there is a delegation that is here to speak to them? It seems as though that is the case. Is there an average time that has evolved over these? Would that take us from 10 o'clock to 12 o'clock?

To what extent is it likely that on December 9 we will have another four and December 16 another four, in which case I can immediately understand the problem with dealing with regulations. I just wonder how that is broken down. It may be that in terms of some of these issues, that is where specifically in the recess we would almost want to be saying that certain meetings would be set aside and we would not deal with private bills, but we would deal in more depth with some of those. I just do not know what the time balance is.

Mr. Chairman: Cindy, can you tell us?

Miss Mifsud: It is difficult to say. It really depends on how quickly the committee wants to deal with them. Certainly there have been some bills that go through in two minutes and some that go through in an hour and a half. Not to press a point, it really is up to the committee how many questions it has. It is very unpredictable, but I can safely say that last session or in the last couple of years there has been difficulty hearing all matters before 12 noon or 12:30 p.m. but then the composition of the committee was different so perhaps that will not be the case. It is a very unpredictable thing.

We have been running short of time. I think that is one of the reasons we are trying to move it forward because you do have the public here and people making delegations. The committee has been loath to send them home without hearing them because sometimes they have come from all over Ontario. So it has been difficult at times. I understand there are private bills scheduled for each Wednesday until the end of the session.

Mr. Beer: Can I just ask another question. In terms of that process--I realize that probably a lot of the answers are in the material but when we have the experts here, strike--when people come forward, are there certain technical things we are doing? Are we simply saying in terms of the Special Ability Riding Institute, we look at the bill. They tell us a bit about it and we just ask them questions or do we go through it clause by clause. How does that--

Miss Mifsud: It really is up to the committee to determine. It is mostly a policy type of matter. Some of these things are just corporate revivals because if they go beyond a certain time, the company has to come to the Legislature to get revived which the committee has generally looked at as routine. Lately some of the committee members have been less than patient because they should have done it and have even been asking some fairly intricate questions about why the default and some others are fairly routine. A lot of charities like to come in and get exemptions from paying property taxes. That has not usually been very controversial, although some members question them as to what the charities do, the nature of the charity and whether it is a worthwhile cause.

The other major portion, say about 40 per cent of the bills, are municipal bills. The municipality wants some additional powers and they are usually the ones, if there is any controversy, that people are going to come and oppose it, because they want additional powers to do things, like prevent smoking in the workplace or stoop-and-scoop bylaws or whatever additional powers they want. That is the one where you will probably take the longest.



Mr. Chairman: I note just from the list that has already come up in the House there are quite a number of private bills already. My sense is we will be kept quite busy. One of the things I did want to raise today and this comes from suggestions of colleagues in caucus who have been on this committee before, they say that the private bills part is, at times, extremely interesting. In fact, it may be a matter of some interest to the public.

One of the committee meetings is televised--I do not want to start making requests with respect to television without the committee being advised that this is a possibility--but a suggestion to me was that the public might well be more interested in what is going on in our committee than what is going on in the House because you get kind of the whole argument in one presentation, including if there is opposition, all the opposition arguments in one fell swoop, so that it can in fact be followed by the public.

I know that there are other committees that would compete for that space. I do not suppose it is the end of the world one way or the other, but subject to what people on the committee feel perhaps we can let them know that we think the public would be served if we showed up on television at least periodically.

Mr. Beer: We would get a really good stoop-and-scoop bylaw then.

Mr. Chairman: We would catch the imagination of the public.

Mr. McCague: Just to ask Cindy, will you have a backlog of bills, for instance, on December 17 to be considered by this committee?

Clerk of the Committee: What we try to do is refer the bills to or consider the bills in the committee in the order they were referred from the House. Because all the bills had to be referred or have first reading again because of the election, we really do not have that much of a backlog. There are a couple of bills. One of them is from the city of Windsor. We would like to get it on because it has a sunset clause of December 31. We would like to get that one through so it is on the agenda for next week.

As far as I can tell, there will not be any serious problem on any of the other bills if we do not consider them until later, but I would have to check with their advertising and to make sure there is nothing in the bill that would be seriously affected if we left it until spring, say May or June.

Mr. McCague: I guess the question is--I have never been a member of this committee before either so there are a lot of things I do not know about it--supposing that there were a number of bills referred, could we sit in the recess to consider them?

Clerk of the Committee: It has been suggested that the committee could sit in recess and consider the bills and have the public hearings. Right now we do not have any that seem to have a lot of people coming forward from the general public to make presentations. We did have that situation with the city of Toronto last year and we started the committee meeting at nine in the morning and went until one in the afternoon and sat again in the afternoon until six in order to get that one bill through. Sometimes the House leaders will give us the authority to do that. We could consider bills when we are meeting during the recess and then they would be reported back to the House as soon as the House met again.

1050

Mr. Chairman: It is probably important that we get permission, if nothing else, to consider any bills that are in during a recess so that we do not start off in the spring with a backlog. There may be something against that, but I strongly concur. My sense is that the problem historically in the past two or three years is that they get a whole bunch of these things and they never really get ahead of them. It seems to me we need to stay on top of that. I completely concur.

I understand for instance--there is nobody else here from the city of Toronto--apparently one of the ones on the city of Toronto deals with abolishing the board of health and there are both proponents and opponents of that. That one alone may be very time-consuming. So my sense is that we will catch a rush of them at some point.

As a practical administrative matter, the way this thing works is Tannis deals with keeping the applicants in mind on the private bills side and Cindy deals with the regulations side. You do not do regulations, do you?

Miss Mifsud: No. I act as counsel only on the private bills side. The regulations aspect of the job goes before cabinet. I think the bills we have in now Tannis has scheduled so that we will be completely up-to-date by Christmas if we get through them all. Because no more can be introduced, there are not many more of them. There are two or three more that are ready to be introduced. At the most we will carry over probably two or three bills.

The only problem I can see with meeting between the sessions is that the member who introduced the bill also comes to the committee and introduces the applicant. I do not know whether that causes any inconvenience to the members if they are from far away, whether they would want to do that, but that is certainly not a consideration from our point of view.

Mr. Chairman: I take it in some cases--and the past members of this committee would be more aware of it than I would--the sponsor of the bill really does not have a personal interest or strong preference one way or another. He is doing a favour to the individuals involved. I have even been advised that in occasional instances the sponsor showed up to argue against the bill. I do not understand how that can be allowed procedurally, but apparently it is, at least historically. I find it a bit disconcerting that this is the way in which they work, but that is what they do.

Mr. McCague: Maybe I could help you a bit on that. I will patiently wait for the day when one of your constituents comes to you and asks you to introduce a bill and you say no.

Mr. Chairman: I understand that. I might look for a colleague who is sympathetic, I do not know. I have not encountered it yet, that is true.

Is there any other question at all with respect to any aspect of what this committee may be dealing with? I have given some private assurances that we would not run really late today, but it is up to you. I am quite prepared to wait here.

Mr. Beer: Could we count on the fact that probably next week, because it is the first time we will be dealing with private bills, in all likelihood that will mean that those will take us perhaps most of the time? Did you want to have an order in terms of these other items so that if by



chance we were through with all those bills by 11 o'clock or 11:15, there was something that we would turn to?

At this early stage it might quite frankly be useful for us to be led through some of these questions in terms of what happens in the drafting of a regulation and so on. I think we all have a certain awareness, but if we are really being asked to look at these things more specifically some quasi-legal education might not be out of order if there is time.

Mr. Chairman: I do not have a problem with dealing with it if we have time. I guess the practical problem will be that the quality of the questions will be enhanced dramatically if people have time and willingness to actually read the material. Some of it they will only want to glance through. I know a couple of the memos to me provide an overview of what exists in other places in Canada. It is probably not necessary to have that reviewed in close detail. On the other hand, reading just a general summary provided by Tannis and also going through perhaps the articles by Mr. Revell. It is important to have some sense of what goes on.

I am in the hands of the committee. I do not have a strong feeling one way or the other. I do not know how readily I can predict how long those four bills will take.

Mr. Beer: Did you want to start with number 5 and work through (a) to (h)?

Mr. Chairman: That is my proposal.

Mr. Beer: Probably this is as useful a way to proceed as any.

Mr. Chairman: I would think for instance under (a) frankly we could probably just about agree to that. Maybe there is some issue or some aspect I am not aware of, but I have thought about it for some time now and I cannot figure out why we would not amend the standing orders to agree with the Charter of Rights. It just strikes me as such an elementary consideration.

Mr. Beer: I would simply want Mr. Kaye to be here and look at what that is in specific terms, that is all. You are probably quite right, but I--

Mr. Chairman: I do not think there is any problem. Available on call, I guess is the best way to put it.

Mr. Kaye: I would be available on call, but there is also the issue of whether counsel who is reviewing the regulations should be here to indicate which guidelines he is looking at.

Mr. Chairman: It may matter to him whether we get the budget through at a higher rate. I am prepared to do it on a call basis, certainly.

Mr. McCague: I think you will find that on committees it is customary to have a subcommittee that you can call together when you wish. For instance, if between now and next week you wanted to decide what was going to be on the agenda in addition to these four bills, you could call the subcommittee together.

I have kind of a motion here and maybe I could read it to you.

I move that so-and-so and so-and-so do compose the subcommittee on

agenda and procedures; that the said subcommittee meet from time to time at the call of the chairman to consider and report to the committee on the business of the committee; that substitutions be permitted on the subcommittee and that the presence of all members of the subcommittee is necessary to constitute a meeting.

It is customary I think to have a member from each party on that subcommittee as well as the chairman. I guess my suggestion would be that the vice-chairman and the two who happened to show up this morning from the other two parties be the subcommittee. I am volunteering myself, but I do not see much alternative.

Mr. Chairman: I think that sounds like a good, logical way of doing it. I certainly would be disinclined to have a subcommittee without all-party representation. So that is fine by me.

Are there any other comments? That is moved, and second by Mr. Beer who is nodding. All in favour? All opposed? Done.

Are there any other questions?

Motion agreed to.

Mr. Beer: Now we can do our reading.

Mr. Chairman: Right. I knew you did not have anything else to cover this weekend so I thought I would help you out.

Interjection.

Mr. Chairman: You are welcome.

I am going to adjourn subject to anybody sitting up here beside me telling me that I have missed something. OK, they are giving us the seal of approval. Motion to adjourn. Moved. Everybody seems to be happy with that motion.

The committee adjourned at 11 a.m.





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STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

ORGANIZATION

SPECIAL ABILITY RIDING INSTITUTE ACT

CITY OF WINDSOR ACT

DRIVING SCHOOL ASSOCIATION OF ONTARIO ACT

CENTRE FOR EDUCATIVE GROWTH ACT

WEDNESDAY, DECEMBER 2, 1987



STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

CHAIRMAN: Fleet, David (High Park-Swansea L)

VICE-CHAIRMAN: Beer, Charles (York North L)

Cleary, John C. (Cornwall L)

Fawcett, Joan M. (Northumberland L)

McCague, George R. (Simcoe West PC)

Pollock, Jim (Hastings-Peterborough PC)

Pouliot, Gilles (Lake Nipigon NDP)

Ruprecht, Tony (Parkdale L)

Smith, David W. (Lambton L)

Sola, John (Mississauga East L)

Swart, Mel (Welland-Thorold NDP)

Substitution:

South, Larry (Frontenac-Addington L) for Mr. D. W. Smith

Also taking part:

Ferraro, Rick E. (Guelph L)

Haggerty, Ray, Parliamentary Assistant to the Minister of Consumer and  
Commercial Relations (Niagara South L)

Morin, Gilles E. (Carleton East L)

Neumann, David E., Parliamentary Assistant to the Minister of Municipal  
Affairs (Brantford L)

Ray, Michael C. (Windsor-Walkerville L)

Reycraft, Douglas R. (Middlesex L)

Clerk: Manikel, Tannis

Staff:

Mifsud, Lucinda, Legislative Counsel

Witnesses:

From the Special Ability Riding Institute:

Eaton, Bob, Chairman

From the City of Windsor:

Kellerman, A. S., City Solicitor

Lynd, Thomas, City Clerk

From the Ministry of Municipal Affairs:

Gray, Linda, Adviser, Legislation, Policy, Powers and Legislation Section

From the Driving School Association of Ontario Inc.:

Kennaley, William, Government Relations Consultant

From the Ontario Safety League:

Andrunyk, Stephen F., President and General Manager

From the Canadian Professional Driver Education Association:

Burger, Frank, Vice-President

From the Ministry of Consumer and Commercial Relations:

Strauss, Earl, Solicitor, Companies Branch

From the Centre for Educative Growth:

Sherwood, Lynn, Executive Director

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Wednesday, December 2, 1987

The committee met at 10:14 a.m in room 151.

ORGANIZATION

Mr. Chairman: We have a quorum and representatives from all three parties here.

I would like to say at the outset for the benefit of the committee members that the budget is due to go before the Board of Internal Economy next Monday. I would suggest that perhaps the subcommittee that was struck last week meet at the end of the regular meeting next Wednesday. Hopefully, we will have a better sense at that time of where we might head in terms of meetings between the sessions, if that is agreeable to members of the subcommittee.

Mr. Swart, you may not be aware of it, but last week we made you a member of the subcommittee, since you showed sufficient interest at least to be present for part of the meeting.

That is what I propose to do, and we can probably review the issue of regulations if time allows next week. Mr. Kaye, I understand, is not available today. I indicated last week that it was going to be possible to have him on an on-call basis today, but that will not be feasible.

SPECIAL ABILITY RIDING INSTITUTE ACT

Consideration of Bill Prl3, An Act respecting Special Ability Riding Institute.

Mr. Chairman: I would like therefore to begin with the agenda. The first item on the agenda is Prl3. I have Mr. Reycraft in front of me. Perhaps he can introduce the applicant for this matter.

Mr. Reycraft: I am very pleased that Prl3 is the first private bill that is being considered by the 34th Parliament. The preamble of the bill as it is before the members explains its purpose, but if I may, I will comment briefly on it.

The purpose of this bill is to allow the municipal council of the township of London in Middlesex county to grant an exemption from municipal taxation to the Special Ability Riding Institute, known as SARI.

As indicated in the preamble, SARI is a charitable organization operating in London township, the purpose of which is to provide therapy through horseback riding to mentally and physically handicapped young people. It has been in existence for several years and it has gained a reputation for doing some very excellent things for young people, both in the city of London and in the county of Middlesex.

Section 3, paragraph 12 of the Assessment Act provides an exemption for charitable institutions, but SARI does not qualify completely under paragraph 12 which exempts:



"Land of an incorporated charitable institution organized for the relief of the poor, the Canadian Red Cross Society, St. John Ambulance Association, or any similar incorporated institution conducted on philanthropic principles and not for the purpose of profit or gain, that is supported, in part at least, by public funds, but only when the land is owned by the institution and occupied and used for the purposes of the institution."

SARI has received public funds from time to time through various Wintario program and capital grants but it is not in receipt of any kind of regular public funding, so it does not completely fit the conditions that are attached to exemption in section 3, paragraph 12. That is why it has been determined that the only way an exemption from property taxation can be achieved is to go the route of a private bill.

I have with me this morning the chairman of the board of directors of SARI, who is, interestingly enough, the former member for Middlesex and actually a former chief government whip, Bob Eaton. I will introduce Bob. He may have a few remarks to make about the organization, and both of us stand willing to respond to any questions members of the committee may have.

Mr. Eaton: Thank you, Doug. I can probably just go over a brief history of SARI for you, and what is involved there. Doug has described what is taking place. SARI started 10 years ago next year, at a meeting around a kitchen table at the Greenberg residence. The Greenbergs had moved out to the country because they had a daughter with Down's syndrome and they were giving her some of the amenities of life while she was still alive.

When she passed away, they wanted to do something with those facilities. From that, they developed a program for many crippled and disabled children to come out and be able to ride. It is not just a case of coming out and riding horses. They do therapeutic exercises on the horses and things like that they cannot do. Many of them cannot even walk.

Over the years I was involved as a member in the program. Since not being a member, I have been on the board of directors and am now chairman. We have about 150 young people from London and Middlesex who participate in the program. All funds are raised through donations and efforts by the people involved on the board of directors, volunteers, parents. No charges are made to any of the groups. We have regular classes during the day for those who come from both the city of London schools and from Middlesex County Board of Education, and classes on evenings and Saturdays for individual participants. It has proved to be an excellent program for these young people.

Having to raise a budget of almost \$150,000 a year, we look for many ways of doing that. One way would be to be relieved of about \$3,500 per year in municipal taxes. Doug and I were together at the London township council and it supported our going ahead with a private bill so it could do this. We have had conversations with both Middlesex county and the Middlesex county school board. They have indicated their support for the program and so on. As you see today, there is no one here from either to object to this bill. I hope that the bill will proceed as it is at the present time.

1020

Mr. Chairman: Thank you very much and welcome back, Mr. Eaton. At this point, the usual procedure would be to call upon a representative of the government to offer a view, depending upon the ministries that might be involved. I would like to introduce Mr. Haggerty, who is the parliamentary

assistant for the Minister of Consumer and Commercial Relations (Mr. Wrye), and Mr. Neumann, the parliamentary assistant for the Minister of Municipal Affairs (Mr. Eakins). Depending upon the matter that comes up, either or both may have comments to offer on the position of the government.

Mr. Neumann: The bills which are sponsored by municipalities would be the ones which fall into my area of responsibility as parliamentary assistant to the Minister of Municipal Affairs. This bill being sponsored by the township of London, it falls upon me to provide the committee with the government's attitude towards the bill.

This being the first bill relating to a municipal tax exemption that the committee may wish to consider, it may want to review its procedures for such application and general criteria. With respect to criteria, it is my understanding that in the past, four criteria have been used to determine the acceptability of an application: first, that the applicant is a registered charity under the Income Tax Act; second, that the property which is being exempted is owned and occupied by the applicant and used solely for the charitable purposes stated. In other words, we would not want an exemption from municipal taxes if a charitable organization is leasing out part of its premises to a business or some other private venture. So you should determine that that is not the case.

The third thing to consider is that the tax exemption be provided by a municipal bylaw. In other words, the bill itself does not exempt the taxes but permits the township council or the applying council of the municipality to do that by bylaw. The fourth thing we recommend is that the local municipal council, where there is a two-tier government, has the support of the upper-tier government, in this case the county of Middlesex, so that the exemption is not granted without its consent. That would also apply to school boards that would be affected by the exemption of taxation.

Those are the four criteria which this committee has considered in the past and which we suggest you apply to this applicant.

With regard to ministry comments, the Ministry of Education has informed Municipal Affairs, and I should inform you, that they do not support any tax exemption for the school portion, the education portion. I believe they have stated these objections in past applications and it is my duty to bring to your attention the concerns of the Ministry of Education.

With regard to the Ministry of Revenue, it has also passed on to me to convey to you its standard objection, conveyed to past committees, which is that you should not be entertaining this special exemption, that review of general legislation on property tax reform is under way and that there should be a general approach to these matters; we should not be exempting individual organizations from paying property taxes.

Now we come to the Ministry of Municipal Affairs, which is my ministry. Having brought to your attention the concerns of the Ministry of Education and the Ministry of Revenue, within our ministry the municipal finance branch has examined this. First, there is one other point with regard to the Ministry of Revenue. This particular application permits a municipality to make it retroactive to January 1, 1987, and the Ministry of Revenue, in principle, opposes the concept of retroactivity. I should draw that to your attention as well.

As I said, the municipal finance branch in our ministry has examined



this. We would like to point out to you that there is a general review under way within the Ministry of Municipal Affairs of these kinds of applications, and we feel this applicant meets the four criteria I outlined, other than the last one, which is the question of the support of the county of Middlesex and the two school boards.

This raises the second general point that I feel you may wish to discuss as a committee and make a determination on, and that is the procedure of notification. You have heard that notification was sent to the school boards and the county. We do not have correspondence. We do not have a clear resolution from either of those elected bodies that they have no objection or that they support this bill. It may be that you will wish future applicants to review that procedure so that there is a requirement that the applicant, the lower-tier municipality applying, get that consent by resolution of the school board or the county council.

Since we do not have it in writing, we have verbal indication that they feel there is no objection. They have been notified and, obviously, they are not here. If they objected, they would be here. We had proposed that an amendment be put that subsection 1(1) of the bill be amended by striking out "municipal and school" in the second and third lines and inserting in lieu thereof "local municipal"; in other words, that there be an exemption only for the local municipal taxes.

I understand that subsequent to my drafting this proposed amendment and having had some discussion with Mr. Reycraft and the applicant, they have an alternative amendment they wish to put forward, which we would find acceptable because it keeps to the principle that the exemption not take place with respect to school board and county unless those two bodies have indicated their consent. I believe the alternative amendment does keep to that principle, and while I am bringing a proposed amendment to your attention, you may wish to hear the alternative amendment, which keeps to the same principle.

Mr. Chairman: Might I have a comment from either Mr. Reycraft or Mr. Eaton with respect to the comments made and, in addition, just as a matter of clarification, could there be a clear representation that the Special Ability Riding Institute is currently a registered charity and also in compliance with the Corporations Act of Ontario? I presume it is, but perhaps that could be put on the record.

Mr. Eaton: Yes. I can indicate to you that we have kept everything up to date in that regard, and everything is registered and in a proper shape for approval for charitable donations. Doug said it had better be, because we just got a donation out of him and he wants his tax receipt.

I would draw another item to your attention. This land that the corporation now owns was donated by the Greenbergs to the corporation, and part of the condition of the donation is that if it ever folds up, the township gets the land. We had to do that so we could get Wintario grants. There is another reason we are saying: "Why should we be taxed during all this period? Then if the place ever closes, the township gets all these facilities, after our paying taxes on them for years." That is another item to look at in that regard.

I would draw to your attention also, as far as the written support from Middlesex county and Middlesex County Board of Education is concerned, that we did not get an indication of these amendments until November 27, so it was a little hard to get the written approvals together. The letter from the Clerk's

office with the amendment notices is dated on November 26. It made it a little difficult. In fact, it did not even go directly to our lawyer. This is to the township of London. It made it rather difficult to get these written permissions. We have had excellent support from the township, the Middlesex County Board of Education and the county council as far as the programs are concerned, with verbal indications--I think Doug has talked to someone too--that they would support this. We hope the bill will perhaps proceed the way it is.

1030

Mr. Reycraft: If I could also comment. Mr. Neumann indicated that objections had been received from two ministries, the Ministry of Education and the Ministry of Revenue. For the benefit of new members on the committee and new members to the Legislature, I would like to point out that the Ministry of Revenue has been regularly objecting to this kind of legislation for at least the past 10 years, indicating that a general review of the property taxation system was under way and that issues such as this should not be done on an ad hoc basis.

Mr. Beer: It may go on for another 20 years.

Mr. Reycraft: Perhaps so. I have a list of seven such bills that have been passed over the span of the last seven years that deal with this kind of charitable organization and have exempted them from municipal taxation.

I would point out that the requirements of public notice, as I understand them, have been met; that is, notice of the bill has been published in the Ontario Gazette as required and has also been advertised in the London Free Press. Even with public notice having been given in that way, there has been no objection from Middlesex county council, nor from the Middlesex County Board of Education. It would seem to me that to require written confirmation of that from those two bodies on such short notice is somewhat unfair, given the fact that preparation of this legislation was started many months ago.

There has simply not been time to get written indication of that from all three bodies that could be affected. However, we did receive, or Mr. Eaton has, a letter from the London and Middlesex County Roman Catholic Separate School Board indicating it had no objection to the bill. My understanding is that the property taxes have been going to the Middlesex County Board of Education. Maybe that was why they were so quick to comply.

We have also received written notice from the clerk of Middlesex county, indicating that they have received the notice and filed it. They have provided us with evidence that they are aware of the bill and have taken no action to indicate objection. It would be my preference, too, that the bill be allowed to pass as it now stands.

Mr. Eaton: I would also add a comment that this gives the choice to the local municipality whether to pass a bylaw or not. Apparently, your government seems to want to try to do that with laws on Sunday openings, so maybe this is a good start.

Mr. Chairman: I do not know how far you want to probe it.

Mr. Eaton: I do not want to cause a controversy or anything.

Mr. Chairman: The correspondence that you referred to, Mr. Reycraft,



has that been given to the representatives from the government, either the ministries or Mr. Neumann?

Mr. Eaton: I just brought them in with me this morning.

Mr. Reycraft: Keep in mind, Mr. Chairman, that the letter from the clerk went out dated November 26 asking for that information, so there simply has not been time, but there is a letter here from the clerk of Middlesex county, and also a letter from the superintendent of business of the London and Middlesex Roman Catholic Separate School Board.

Mr. Chairman: Perhaps it might be appropriate to table that and it can be circulated to any member here who wants to look at it. On one other aspect of it from the comments I have heard, as I recollect the points made by the government, could you comment with respect to retroactivity?

Mr. Eaton: The reason for doing that was the fact that we appeared before the township council last November or December. At that time, they were willing to go ahead and the bill was being drafted. Of course, we got into the spring session and the bill did not get introduced so it was changed so they could do it to cover this year's taxes.

Mr. Reycraft: The bill does state that it is effective January 1, 1987. It is my understanding that if it passes before the end of this calendar year there is no retroactivity since municipal taxes are not due until the end of the year in which notice is served. Certainly that is the principle that is established in the legislation that allows municipalities to collect taxes, as you would well remember, I am sure, Mr. Neumann, having had some relationship with these things.

Mr. Beer: The question I had, though there is no one here from the Ministry of Education, is does it generally object to this kind of bill? I have no problem with revenues in that it seems to me every decade we launch massive reviews of various assessment systems only to launch them yet again 10 years later, and if we were to wait for all of that to happen I suppose we would not pass any bills. But is Education's--perhaps Mr. Neumann can respond to that. I just wondered, what is their reasoning? Is it that they just do it in a blanket way or what?

Mr. Neumann: The objection from the Ministry of Education, as I understand it, is a new objection. They have not objected in the past, but their concern is that there seems to be an increasing number of these kinds of exemptions being requested and they feel in principle that it erodes the tax base for education purposes and they would not like to see this.

Mr. Beer: So the purpose of the amendment is simply to indicate that then the local school board would in effect not just say, "We don't have an objection," but say, "This is all right with us," is that it? Are they being asked to make a positive response as opposed to just sort of assuming no response means it is all right or are we simply saying that if they do not object, then it goes through?

Mr. Neumann: The Ministry of Municipal Affairs believes that the accountability should be at the level of government receiving the taxation. In this case, the township council has made the application on behalf of the riding institute, and clearly, if they want to pass a bylaw to exempt this organization, the committee may wish to allow them to do that. However, we do not feel the township council should also exempt the school board and the county council unless they have consented as well.

You can do that either by having consent here at the committee--we do not have clear consent, although it might be argued that there is no objection--or an amendment could be put into the bill that would say that the township must have resolutions from those two councils prior to exempting the school board taxes and the county taxes at the time it passes its bylaw, that this be in, a requirement it needs in passing the bylaw. I think that is a reasonable alternative to the amendment we put forward and would at this stage eliminate that.

Mr. Swart: I think that on its merit, this bill deserves to be passed. I realize the precedent that is being set in passing something like this. As the member for Niagara South (Mr. Haggerty) knows, we of course have the Residence Richelieu for the handicapped in Niagara. If you pass this, should they not get the same privilege of being exempt from taxes? However, we have this one before us and I think it merits our support.

I have to say that I am a little bit intrigued by the process we have on this. I was on this committee many years ago. I had thought this responsibility had been taken away from the municipalities and had been given to the province quite a number of years ago so that we could make decisions here, that we would take the responsibility. Now I guess, from what the parliamentary assistant says, in fact we are doing on this as we did yesterday, passing it back to the local municipality.

You have to have unanimous support, before they will recommend it, from each of the bodies receiving the taxation. If that is the case, then why we do not put it back again to the municipalities like you did yesterday? After all, these items are always controversial and interfere with the support we might get at election time if we do not make the right moves here. So why do we not pass it, like Sunday shopping, back to the municipalities?

1040

My feeling is that you should not try to have it both ways, that if we want the province to have responsibilities the government decided on years ago, then we take the responsibility here and make our decisions. If one municipality or one body receiving taxes does not go along with it, it is our job here to decide, because the government of this province decided that is the way it is going to be. If you think the municipalities should have the say, let us turn it back to them.

The law at the present time says we make the decision here at the province. That is our responsibility. We do not have to have some unanimous support from four sides. As I said, if you want that, then let us turn it back to the municipalities. I do not think we can opt out in that manner and therefore I am going to vote for the bill.

Mr. Neumann: I have some additional information. As you know, local councils have two options with respect to supporting charitable organizations. The most commonly used option is to make a grant each year to the organization. It allows the municipality to review the worthiness of the organization. The exception is this route and obviously the Legislature has approved and set precedent for that.

With respect to taxation, the information and advice handed to me here is that there is a retroactivity involved. While taxes are not due, the liability for taxation is presently there. The proposed bill says effective January 1, 1987, so the retroactivity would be in effect for the period of



time from January 1 to the passing of the bill. This, then, indicates the concern of the Ministry of Revenue on the principle of retroactive tax exemption.

Of course, if you choose to eliminate the retroactivity and make it effective the day the bill passes, the township would have the option of paying a grant back to the riding institute equivalent to the amount of taxes that would have been paid for the period from January 1 to the passing of the bill. That still would lie within their hands, to support the organization before us.

Mr. Eaton: The reason for doing that, of course, is that if the municipality makes a grant back for the total amount, then it has collected and passed the school taxes and other taxes on and it is costing the municipality that much more. This way, it is coming from the municipality, the county and the school board. They are all supporting it. The municipality would be giving a grant back on money it had already passed on, so it would cost the township twice as much.

Mr. Chairman: I understand. Mr. McCague?

Mr. McCague: Are you ready for a motion, Mr. Chairman?

Mr. Chairman: I am if there are no other questions arising from the comments that were made. There do not appear to be any.

Mr. McCague moves that the bill as presented be reported to the House and that the fees, less the cost of printing, be waived, as this deals with a charitable organization.

Mr. Swart: I would second that.

Mr. Chairman: Are there any questions, comments or amendments arising from that motion?

Mr. Sola moves that the preamble to the bill be amended by striking out "municipal" and "school" in the 12th and 13th lines and inserting in lieu thereof "local municipal."

I take it that is an amendment that is being proposed.

Mr. Sola: That is an amendment, right.

Mr. Chairman: I have had the benefit of some advice that suggests that the amendment may be out of order because there has been a motion to move the whole bill, the theory being that if the motion is to report back the whole bill, you cannot amend part of it. My inclination is frankly not to follow that advice. At the risk of being out of order, my inclination is to--As I understand it, there is a motion to accept it as is. The thrust of the amendment is that you are prepared to accept the bill, Mr. Sola, but you want to amend some words in it. Is that correct?

Mr. Sola: Yes.

Mr. Chairman: I am inclined to allow the amendment at least in terms of being in order and then have the matter voted on, first the amendment and then the bill.

Interjection: Is there a seconder?

Mr. Chairman: I do not believe a seconder is required for an amendment in committee.

Mr. Reycraft: Mr. Chairman, would it be in order for me to call for a five-minute recess so I can have an opportunity to liaise with my colleagues on the committee and perhaps with Mr. Neumann as well?

Mr. Chairman: I am quite prepared to consent to the request.

Mr. Reycraft: I do not think I can make the request. I am not a member of the committee.

Mr. South: I will request that we recess for five minutes.

Mr. Chairman: The recess is granted for the purpose of consultation for not more than five minutes.

The committee recessed at 10:47 a.m.

1052

Mr. Sola: After the recess and due consideration, I think I will withdraw the amendment.

Mr. Chairman: The chair welcomes the withdrawal.

Mr. Sola: It is good to help you with your decision-making.

Mr. Chairman: Discussion is a wonderful thing.

Mr. Swart: It might be helpful in the future if the Liberal caucus could get its act together before we deal with these things.

Mr. Chairman: The chairman will not make any observations about the time of arrival of members to the committee.

That being the case, there is a motion by Mr. McCague, seconded by Mr. Swart, on the floor. Are there any further questions?

All those in favour?

All those opposed?

Motion agreed to.

Bill Pr13 ordered to be reported.

Mr. Eaton: I would like to express my thanks to the committee. I am sure everybody will be appreciative of it. You have certainly helped us out a bit in our fund-raising process.

Mr. Chairman: You are quite welcome, and we would like to extend our best wishes to everybody at the Special Ability Riding Institute with their good works.

Mr. Beer: As this is the first meeting for a number of us where we



are dealing with bills, I say generally that I trust other applicants will appreciate it is a learning process for us as well.

I do think there are some questions that have been raised with respect to the previous application that relate to process which we, as a committee, will have to come back to and deal with. But I think in these cases we do need to be guided by the proposal that is before us.

The sense was that this was a reasonable proposal, and a number of the issues that some of the ministries are raising are ones that we will need to look at. I think Mr. Neumann's comment about looking at that and perhaps having a clear decision for future applications in terms of what is or is not expected of the applicants is something we should do.

Mr. Chairman: As a matter of fact, I did not want to make any comment until the matter had been disposed of, but I understand that private bills of a similar or identical nature to what we have just had are fairly common. They do come periodically through this committee.

In my review of the materials that we had submitted on this bill, I asked myself the question of what alternatives we might have for exempting charities from municipal taxation without the necessity of a private bill and the consequent expense.

The biggest expense, I think, is the printing cost. It seems to me a motion might well be in order that we, as a committee, would ask for a report back at an early occasion--I do not know if it would come back before Christmas, but an early occasion thereafter--from the ministries of Revenue, Municipal Affairs and perhaps also Education, because it seems to me there are probably better ways to do this than the way we are going through it and the expense for each of the parties, particularly charities.

Mr. Swart: I basically agree with what you have said, although I think we might want to do it in reverse order and at some point, after we have dealt with a number of these bills, make a recommendation from this committee to the government with regard to the procedures for dealing with private bills.

I just want to point out--I talked rather facetiously before, but I think with some justification--that there will be many organizations asking us for similar legislation; I mentioned one in our area, the ??Richelieu Residence for the Handicapped. Once this gets around, we will just be flooded with private members' bills. I think we have to take a good look at what we are doing here, maybe set up some procedures. If the government is going to continue this way of dealing with exemptions to taxation, then we are going to need some guidelines with which we agree.

Mr. Chairman: Is there a motion that anyone wants to make, or does the committee prefer to wait for this matter?

Mr. Swart: I think there might be some merit, as we will be dealing with a number of these private bills, to get a sense of them over a little period of time. Then, if we feel strongly, we can move a resolution at that time.

Mr. Chairman: I am certainly in the hands of the committee and I sense that is the wish of the committee. Perhaps we can add that to a list of things for reform. The list is growing.

I would therefore like to deal with the next item on the agenda, Bill Pr69, An Act respecting the City of Windsor. Mr. M. C. Ray is the sponsor. Perhaps you could come forward and introduce yourself and all of those with you.

### CITY OF WINDSOR ACT

Consideration of Bill Pr69, An Act respecting the City of Windsor.

Mr. M. C. Ray: Mr. Chairman and members of the committee, it is my pleasure to be here in support of the application by the city of Windsor for this bill, which deals with three distinct subject matters.

Section 1 of the bill would authorize the city to pass bylaws requiring screening fences to be erected around parking stations and parking lots. Section 2 of the bill deals with the establishment of a licensing commission for the city of Windsor. Section 3 of the bill deals with demolition control areas and the necessity for demolition control permits.

I have with me here today, on my far left, Thomas Lynd, who is the city clerk for the city of Windsor. To my immediate left is Al Kellerman, QC, who is the city solicitor for the city of Windsor. They will explain the bill and make the representations related thereto.

Mr. Kellerman: Thank you. If I may, Mr. Chairman, section 1 of the bill is an amendment requested by the city of Windsor in order to allow it, as part of its licensing scheme, to require that a screening fence be erected around parking lots in order to separate visually the parking lot from the abutting neighbours. I believe in this case the ministry is proposing an amendment which, no doubt, the ministry will be speaking to.

The reason the bill is here before this committee is due to the Supreme Court of Canada, which, in a case originating in the city of Vanier, held that the municipality of Vanier did not have the right, under its licensing powers, to require the construction of a screening fence. So it is necessary to come here to seek this private legislation.

Section 2 of the bill is to amend the procedure whereby licences are given out in the city of Windsor, in that the city of Windsor does have private legislation at the moment, and whereas the government did give the city the power to license those things which are normally licensed by a board of police commissioners in cities of more than 100,000 people.

The city obtained that legislation in the early 1980s. At that time, it chose to administer its licensing authority through a licensing committee composed of three members of council. Then provided for in the legislation was an appeal from the licensing committee to the entire council, the difficulty being that the general rule, as I understand in law, is that no person can sit on his own appeal. So, by necessity, the three members of council, who were members of the licensing committee, were unable to take part in the deliberations respecting the appeal and there were, consequently, problems in obtaining a quorum.

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In order to remedy that problem, the city is proposing that the licensing administrative function be carried out by a licensing commission that would be composed of a member of council and two citizens who are entitled to be elected members of council.



There is also a provision for an appeal in the normal manner from the refusal of the committee to grant or renew a licence to the Divisional Court under the Statutory Powers Procedure Act. The balance of that section 2 is the housekeeping aspect, or the means whereby the commission shall be appointed. It provides for the payment of remuneration to the commission; sets out the powers that are granted to the commission, for example under subsection 2(8), which are analagous to the powers generally granted under the Municipal Act; it grants the power to extract a licence fee; and does allow temporary suspension by the licence commissioner, who is appointed by the licensing commission to administer the licensing bylaw.

Thus, a very limited power is given for a temporary suspension. I believe it is provided for in subsection 14, and in subsection 15 it limits that suspension to two weeks or to the next meeting of the licensing commission after the suspension, whichever occurs first. Then, there is the conflict provision. If there is a conflict between the provisions of any other act, the provisions of that act prevail to the extent of the conflict.

Finally, there is the matter of a sunset clause that was imposed on the city of Windsor when five years ago it obtained special legislation to establish a demolition control area in the business development areas of the city, whereby limitations and restrictions were put on anyone who wished to demolish a building in the business improvement area where the municipality had expended funds in attempting to beautify the area and make it more attractive for the purposes of carrying out the retail function. It basically provided that it would be necessary, if someone wished to demolish a building, to enter into an agreement with the municipality to beautify the lot, that is, the vacant land that would be left after the demolition of the building. That section provided for an appeal to the Ontario Municipal Board in the event of disagreement between the owner of the property and the municipality.

The five years have now expired. The sunset clause is facing the municipality as of the end of this year. We are here asking that the sunset clause be deleted in order that the demolition control provisions carry on. The municipality feels these provisions have been a particular advantage in maintaining the attractiveness of the business improvement area.

That concludes my submissions on behalf of the city of Windsor. If you have any questions, the clerk or I will be pleased to answer same.

Mr. Chairman: Are there any other comments?

Mr. Lynd: No, Mr. Chairman. I am here to answer questions as the licence commissioner.

Mr. Chairman: That being the case, perhaps Mr. Neumann has some comments.

Mr. Neumann: This again is a bill put forward by a municipality, in this case the city of Windsor, covering a number of areas. I should commend the applicant in that there were some concerns expressed early on, and what you see is the end of the process. There have been a number of alterations incorporated by the applicant, concerns expressed by the Attorney General's office and so on, and the applicant has been quite co-operative in structuring the bill.

There is only one change that we would like to see, and I understand from speaking to the city solicitor that this would be entertained by the city

as a friendly amendment. So I would ask that you carry on with the procedure that would permit an amendment.

Mr. Chairman: Mr. Neumann moves that subsection 1(2) of the bill be struck out and the following substituted therefor:

"In a bylaw passed under paragraph 149 of section 210 of the Municipal Act, the corporation may require the owners or operators of public garages to erect, maintain and repair, at their own expense, screening fences around public garages to visually separate areas and to block off views."

It was the feeling of the Ministry of Municipal Affairs that the way the proposed bill is drafted, the one before you, it could be interpreted to include all parking lots, including ancillary parking of commercial areas and so on within the municipality, and that the intention of the city of Windsor is to apply the requirement for screening to businesses, to parking areas licensed by the municipality.

What this does is tie it in to the licensing authority under the Municipal Act and therefore targets the requirement for screening to the area originally intended and avoids the broad-brush treatment, which we feel could create some problems in terms of zoning through private legislation, in effect.

Mr. Sola: In the light of that explanation, I move that amendment be adopted.

Mr. Chairman: Any motion, Mr. McCague?

Mr. McCague: You are nervous already, Mr. Chairman.

Mr. Chairman: No, not at all.

Mr. McCague: I just wonder if that is the extent of the comments from all ministries.

Mr. Neumann: There are no other concerns expressed by the ministries. We are in support of this bill with this one amendment.

Mr. Chairman: Are there any other comments or questions from any members?

Mr. Beer: I have a question of information. Are there other cities that have this similar power? How do other municipalities deal with this problem?

Mr. Kellerman: As I understand it, in regional municipalities that power varies. Sometimes it is given to the regional municipality, sometimes to the area municipality and sometimes it is split between them. I believe the city of Hamilton also may have moved to take away the licensing power given under the Municipal Act to the board of police commissioners and operate that in the same way as the city of Windsor, through the council of the city of Windsor, and a further delegation to a licensing commission.

Mr. M. C. Ray: I might add one thing. As a former member of the Windsor city council, politically it is confusing to the public to have the city of Windsor councillors sit as members of the licensing committee and then thereafter entertain an appeal to the council as a whole. They do not understand quorums, they do not understand the necessity of declaring a conflict, having sat on the original hearing and then again on the appeal.



In that sense, I think this will go a long way towards alleviating the confusion in the public mind as well as solving the practical problem for the councillors of the city that has arisen as a result of the volume of work there is that this committee must entertain in a city the size of Windsor or in larger cities. It becomes a very onerous task to have part-time members of city council sit on a committee that must deal with the number of licensing applications that come before it. It is best to have it put off to another committee of laymen with one member of council who has the kind of time that is needed for it.

Mr. Neumann: In answer to Mr. Beer's question, I am not sure if he was referring to the licensing provision, to the extension of demolition control or to the screening. There are three portions of the bill. I am not sure which section--

Mr. Beer: I guess to both those two, the licensing and the screening.

Mr. Neumann: I believe the screening is the first?

Mrs. Gray: The screening, to my knowledge, is the first. Municipalities do have the power, through site plan control under the Planning Act, to require screening in cases of new garages and new development if they apply site plan control, but to my knowledge, this would be the first legislation of this nature applying to existing garages.

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Mr. Neumann: With respect to the demolition request, we have not had any indication from anyone in the Windsor area that the council has abused the special powers it has, and it is asking for an extension.

With respect to licensing, I believe Ottawa, Toronto and Hamilton have licensing commissions, and one or two municipalities have licensing authority in addition to that granted under the general licensing provisions of the Municipal Act. There is a review within Municipal Affairs under way of licensing as a whole across Ontario for possible general legislation in the future.

Mr. Chairman: There being no other questions, there is a motion, which I take it is really more accurately described as an intention to move a motion at this time, to have section 1 amended and then carry it as amended. Is that correct, Mr. Sola?

Mr. Sola: Correct.

Mr. Chairman: There is a motion before you to carry section 1 with the amendment. I will not read it out unless somebody asks me to, but it is as printed. Everybody has that. Any questions on the motion?

Motion agreed to.

Section 1, as amended, agreed to.

Mr. Chairman: I would not think you would want to leave just yet. We still have to cover the rest of the bill. There are sections 2 through 5, plus the preamble and title.

Sections 2 to 5, inclusive, agreed to.

Mr. Chairman: I will need a motion to report the bill back to the committee.

Bill Pr69 ordered to be reported.

Mr. Chairman: I think that now concludes the matter.

Mr. Neumann: Mr. Chairman, that concludes the bills that relate to Municipal Affairs. I thank you for your co-operation.

#### DRIVING SCHOOL ASSOCIATION OF ONTARIO ACT

Consideration of Bill Pr7, An Act respecting the Driving School Association of Ontario.

Mr. Chairman: Mr. Ferraro, welcome. Perhaps you can introduce yourself and the other gentlemen with you.

Mr. Ferraro: For those of you who do not know me, or those of you who wish they did not know me, my name is Rick Ferraro. I am the member for Guelph, and I am proud to be the sponsor of Bill Pr7.

I think it is safe to say that I probably do enough talking around this House, and my colleagues will probably agree with me--although I would appreciate no editorial comment at this time. Suffice to say I would like to introduce William Kennaley, to my immediate left, who is the consultant and spokesperson for the association and indeed for the delegation.

Mr. Kennaley: I would like to start by introducing the members of the delegation who are here representing the Driving School Association of Ontario.

On my immediate left is Richard Lloyd, who is vice-president of the chief instructors' association. On his left is Peter Christianson, who is the president of the Young Drivers of Canada, which I am sure most of you are familiar with. At the back of the room is Jack Beer, who is a driving school operator; Fred Gutenberg, who is another driving school operator; Ron McCrea--

Mr. Chairman: Perhaps you could be sure to speak directly into the mike

Mr. Kennaley: I am sorry--Rob Brown; Lakeram Sukhu, a representative of the Canadian Automobile Association, who is here in support of the bill; and Des Sinclair, who is also a driving school operator and here in support of the bill. Those are all that I recognize.

Mr. Chairman: Perhaps you can go ahead with your presentation then.

Mr. Kennaley: I would like to thank you, Mr. Chairman, and the committee for the opportunity to address you in respect of this bill.

I would like to start by noting the absence of John Svensson of Guelph, president of this association, who is regrettably unable to be here today because he is on a business trip to Hong Kong. He is feeling badly about this, as you can appreciate, because the successful passage of this legislation has been one of the focuses of his term as president of the association.

Mr. Beer: Is he setting up a branch?



Mr. Kennaley: I believe Mr. Svensson has been retained as a consultant to the government of Hong Kong in driver education; that is the purpose of his trip. I know he has been there several times in the past few months.

I would like to make a few brief remarks about the driving school association itself and then follow them up with a few brief remarks about the bill. Then, of course, I will try to answer any questions you might have.

It is also my understanding that there are or may be other parties present who have expressed an interest in the bill. I assure you, Mr. Chairman, the Driving School Association of Ontario is pleased by their interest and, through you, we will endeavour to answer any questions they may have.

DSAO is a voluntary, not-for-profit association of persons, firms, partnerships and small companies which are commercially engaged in the business of teaching highway safety and the driving of motor vehicles in compliance with safety laws and rules.

The association was incorporated under letters patent on November 21, 1979. It operates under a set of bylaws, which I have a copy of here and which, if you want to have information about or want to have tabled, I would be happy to do so.

A board of directors is elected by the membership at an annual meeting each year. The membership of the association includes both large and small firms, and in fact four of the members of the present board of directors of the association operate just one-car schools.

Affiliated members of the association include a wide range of organizations that are interested in promoting driver education and highway safety, such as the chief instructors' association and the Ontario Council of Fleet Trainers. We expected some representation from the fleet trainers today, but I do not see them in the audience.

Your committee may be interested in some numbers respecting these private professional driver trainer organizations. In a brief that was presented by the association to the then Minister of Transportation and Communications (Mr. Fulton) on February 26, 1986, it was estimated that about 1,500 full-time jobs and 2,000 part-time jobs are being generated annually by these schools. The total economic value, just from the operating side of the schools, is estimated at about \$25 million. It is a fairly substantial contribution to the province's economy.

There are other benefits accruing to the province, of course, from driver training. This training was undertaken by about 60,000 new drivers during the past year through the DSAO member schools. It is horrifying to think, on the other hand, of the costs that might be accruing to the economy of Ontario if these schools did not carry out their function in a highly professional manner.

I might add at this point that there is little or no claim on the public Treasury from the operation of these schools, or by the students who take the driver training through them.

I would like to turn now to the bill itself.

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About two years ago, the association requested the Minister of Transportation and Communications to consider setting up some mechanism to allow self-regulation within the driving school industry. Several options were discussed during the following few months, but it was ultimately agreed by the minister and the parties to the discussions that one of the options, which was direct government regulation, was neither necessary nor desirable. Neither does the minister support the option of compulsory membership. I believe it is the policy of the government not to extend exclusive rights to any professional groups at this time as well.

Mr. Ferraro: Except politicians, of course.

Mr. Kennaley: Except politicians, yes; they are excluded. But that is fine. We all like politicians, heavens above.

During the course of this hearing today, your committee is probably going to be asked to consider changes to the bill which would make membership in the Driving School Association of Ontario compulsory. Our understanding of this issue is that the position of the minister and indeed of the government is that any compulsory regulation or compulsory registration of driving schools or instructors is not acceptable to them. Our position is that we support the minister on that, and we support the position of the government. DSAO is committed to making the bill work for the best interests of everyone concerned, the way you have it in front of you.

One feature of this bill is that it is not unique. As you know, your committee deals with many of these types of private bills. Most recently, for example, the Purchasing Management Association of Canada announced royal assent of Bill Pr65. Other professional bodies as diverse as the Institute of Municipal Assessors of Ontario, the Certified General Accountants' Association of Ontario and the Association of Municipal Clerks and Treasurers of Ontario have successfully petitioned the Legislature for this type of reserve title legislation.

A second feature of the bill is that it incorporates in section 8--you may want to make a note of this--the requirement that members of the association who otherwise meet the criteria set out in the bylaws must also be in possession of a valid driving instructor's licence issued under the Highway Traffic Act. That requirement ensures not only that the holder of the designations has attained the minimum educational standards but also that the person would be removed from the rolls of the association should he for some reason or another lose a licence. It is our belief that this requirement lends a fairly high level of credibility and accountability to these designations and, more importantly, to the members themselves than otherwise might be the case if it was not in there.

A third feature of the bill is that it does not convey any exclusive right to practise. Section 9 of the bill succinctly spells that out. The Driving School Association of Ontario clearly recognizes that there has been concern expressed on that account and indeed some favourable petitioning for that, especially by some instructors in the province who operate what are essentially small, single-person facilities.

Section 9, as written, speaks directly to the expressed policy concerns of the minister which we noted earlier. This bill is therefore not coercive. It also does not prohibit anything except the use or the implied use of the



designations that are described in it. It contains, I believe, provisions for appeal by any individual who feels he or she has been wronged by it or by actions of the registrar. On that particular issue, the current bylaws of the association do have in them a process for dealing with appeals. This bill does not speak directly of that, but I believe we have that adequately covered off, and it can be adequately covered off in the bylaws of the association as they are developed.

What the bill really does is enhance the status of everyone involved in driver education in Ontario. It is simply one among the many steps that have been taken by the Driving School Association of Ontario over the years to improve the standard of driver education for the small operators as well as the large ones. I think one of the outcomes of this proposed legislation will be tremendous advantages; some of these are already becoming apparent within the industry.

For instance, a new certificate program in driving school management has recently been set up and is being put on at Sheridan College with the involvement of people from DSAO and the chief instructors' association. I believe it is being implemented currently. One of the other more recent developments is a certificate program in driver education that is specifically designed to meet the educational requirements of this bill. That program has already commenced at Sheridan College, and it is expected it will be fully in place by the end of 1988.

Among the purposes of the Driving School Association of Ontario, as they were expressed in the letters patent about 12 years ago, were to "help upgrade, dignify and professionalize the driving school industry so that it may be indeed worthy of the public's confidence and trust." That is an important point. Mr. Chairman, if the members of your committee would turn to section 3 of the bill, they will find similar objects expressed there except, I suppose, they are in more legal jargon in section 3 than was expressed in the letters patent years ago.

The raison d'être of the association clearly has not changed in the past 12 years. I believe this bill is simply one more step in the development of the Driving School Association of Ontario and its individual members along the path to professional status. Of course, we know you will give the bill your worthwhile consideration, and we thank you for your forbearance here in listening to us.

Mr. Chairman: Thank you very much. Mr. Haggerty, do you have any comments?

Mr. Haggerty: Thank you, Mr. Chairman. The ministry's policy staff have reviewed all the bills before the committee this morning--Bill Pr13, Bill Pr69, Bill Pr7 and Bill Pr12--and have indicated no objections, nor have they suggested any amendments to these bills. I do have, on my left, Earle Strauss, legal counsel from the companies branch. If any technical questions arise, I will leave it to legal counsel to advise the committee.

Mr. Chairman: Thank you very much. Are there any comments or questions by the members of the committee?

Mr. Ferraro: A point of clarification, Mr. Chairman. I am sorry, Mr. Haggerty, did you say Bill Pr13? It is Bill Pr7.

Mr. Haggerty: No. I just--

Mr. Chairman: He has covered all of them.

Mr. Ferraro: Did you cover all the bases? Very good. Yogi Berra would be extremely proud of you.

Mr. Chairman: Are there any other comments or questions?

Mr. McCague: I thought reference was made in your remarks to the fact that we might be hearing from others about mandatory membership.

Mr. Kennaley: I understand that to be the case. I understand that there are other witnesses here who would like to speak to the bill, and they might be addressing that issue.

Mr. Chairman: Certainly we will give people an opportunity to speak, if that is what they want. Before I go on, are there any other questions from the members of the committee at this stage?

Mr. Beer: I wonder whether it would be better to hear from anyone else and then we could ask any questions.

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Mr. Chairman: If there are other persons who wish to speak to the bill, perhaps they can come forward.

Interjection.

Mr. Chairman: Depending on how many want to come forward. I will not ask that you all be displaced, but I would like the people who come forward--I cannot see if there is a mike at every spot, but that is the important issue. When any other persons come forward, would you indicate your name and organization, if applicable, and your position--whether you are supporting it or not--and then provide whatever comments you think are appropriate.

Mr. Andrunyk: I am Stephen Andrunyk, president of the Ontario Safety League. Thank you for providing us this opportunity to comment on this private bill, An Act respecting the Driving School Association of Ontario. Before I present the league's views, however, it may be appropriate for me just to give you a short history and structure of the league.

It was formed in September 1913 in the city of Toronto, having as its object the education of the public as to the dangers on the street and the prevention of accidents, and it has been a provincial safety body recognized by the government since 1923. The league operates as an independent noncommercial, nonprofit, nonsectarian, nonpolitical and charitable organization registered under the federal government.

The league takes pride in the fact that it is the forerunner of the safety movement in Canada. It was instrumental in establishing provincial safety councils from coast to coast and the Canadian National Safety League, which in 1968 became the Canada Safety Council. Today the league is involved in nearly 30 separate safety programs covering such areas as fire safety, child safety through its main symbol, Elmer the Safety Elephant, canoe safety, Halloween and others. It is the provincial administrator of the Block Parent program.

Its main efforts are concentrated on the traffic environment, where more Canadians are killed and maimed every year than in any other area of human



activity. This is why the league is particularly interested in a bill like Pr7, because such a bill will have a direct impact on the league's present and future role in the traffic environment as a recognized provincial safety body.

Now, at the beginning I wish to stress that the comments I will make on this bill are not intended to denigrate the Driving School Association of Ontario; neither are they intended to discourage the government of Ontario from doing what it considers to be in the best interests of traffic safety in this province. The comments are intended to be constructive in the hope that they will strengthen our mutual efforts to make our streets and highways safer. The league has great respect for DSAO because many of its members are in fact members of the league's driver approval program, so we are here to try to see if we can improve this bill.

The problem the league has with this bill is its failure to achieve the objectives which I think it hopes to achieve. The bill also has some basic flaws which, in my opinion, if passed without amendment, will create confusion and controversy. Let me be specific.

In my opinion, Bill Pr7's major shortcoming is section 9, which states, "This act does not affect or interfere with the right of any person who is not a member of the association to practise as a driving instructor or to operate a driving school in the province of Ontario."

Now, this section appears to defeat the basic purpose of the act, which is not clearly stated but which I assume is to establish a competent, professional driving school system in the province. Unfortunately, nowhere in the bill is there a clear statement of what the government of Ontario wishes to achieve by the passage of this bill.

I note that the preamble to this bill states, "that the association is desirous of being continued as a corporation for the purpose of carrying out the objects of the association and of the government," but in section 3 only the objects of the association are listed. Nowhere in the bill are the objects of the government, which are inferred in the preamble, alluded to. I have yet to discover what the objects of the government are in traffic safety, although I know what they are generally.

It is highly unlikely that the objects of the association and the government are one and the same, and I cannot believe that the association's objectives listed in section 3 are those of the government. Or are they? I think the committee should look at that aspect.

I respectfully submit to this committee that if the government's aim is, as I believe it should be, to establish a professional driving school industry, then this bill will not achieve it. This aim cannot be met unless and until every single unit, whether it be a single-person operation, a franchise operation like Young Drivers of Canada, the DSAO or any group that is involved in the commercial driving school industry in this province or in the secondary high school program, becomes responsible to a regulatory body. If it does not become responsible to such a body, then we achieve very little.

If the government of Ontario is prepared to accept DSAO as the professional regulatory body, as it seems to do or wants to do, for the driver education profession, then why would it limit DSAO's regulatory powers to only about 30 per cent of those who are involved in driver education in this province? What about the other estimated 200 driving schools that operate outside this body? I submit that this question should be seriously considered.

What will we achieve if we pass this bill in its present state? In my opinion, very little. All it will do is give DSAO members a right to say, "We are approved by the government of Ontario," while 200 other schools will be denied that right.

What section 9 also does, in its present form, is to open the door to any other group of driving schools outside this membership that may wish to seek similar recognition by the government. I believe the government would be hard pressed to deny such recognition, since providing recognition to only one segment of this industry could be construed as discriminatory.

Now, the league is also concerned with the bill's intention of giving a lot of certain specified designations. What concerns the league most is the first one, and that is the accredited driving instructor.

At the moment, the government lays down a specific course for a person to be qualified as a driving instructor. It is a 130-hour classroom and behind-the-wheel basic driving instructor's course. The course of study for this program is prescribed by the Ministry of Transportation. It can be conducted only by chief instructors qualified by that ministry through either community colleges or the Ontario Safety League. It is a Ministry of Transportation course to be conducted only by instructors approved by it, yet here we have a bill that says that DSAO will have the exclusive right to grant the designation ADI for the completion of a course that is under the exclusive control of the ministry. A driving instructor gets a licence to teach driving in Ontario--period. That is his right once he gets the licence, and that licence is granted by the government.

I have also some concern about the appeal procedure as provided in subsection 7(4). It seems unusual for an association not to provide for an internal appeal procedure, as this bill proposes to do. The bill says that the only appeal you have--and I look at subsection 7(4): An individual who is qualified for membership but who has been refused membership goes to the Divisional Court.

I believe I am right when I say that the Divisional Court is a branch of the Supreme Court of Ontario and that appeals to that court involve a lengthy and detailed procedure which can be done only through legal counsel. Costs of such appeals can run into thousands of dollars. Thus, the appeal procedure in this bill would tend to discourage such appeals, primarily because of the high potential cost of pursuing such a course of action.

There is also a contradiction in section 7. Subsection 7(1) says, "The association shall grant a membership," which to me is imperative once those things are met. But in subsection 7(4) it says that an individual who is qualified for membership but who has been refused membership then must appeal, which to me is a contradiction. If you shall grant a membership, then why not grant it, as it indicates in subsection 7(4)?

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I am also concerned about a requirement to be of good character. I would like someone to tell me what we mean by "good character." I stress this point because decisions of human rights commissions seem to accept the view that "good character" is undefinable in today's societal mores, and I think we should have a look at that.

These are my comments, which I think are worthy of consideration.



In conclusion, I would like to urge the government of Ontario to study the driver education situation in Ontario very carefully. It has been a controversial issue for at least the past 30 years. If the government is serious in its desire to improve the standard of driver education in Ontario, then it should give up any efforts to do it in half measures. The only way to achieve its objective of providing for a high standard of driver education in the secondary school system and the private sector is to place all driver education in the province under one regulatory body. Doing anything less will achieve very little in the driver education field.

Mr. Burger: My name is Frank Burger. I represent the Canadian Professional Driver Education Association as chairman. Our association was founded more than 20 years ago. We represent driving instructors, high school teachers and driving school owners. We also represent high school driver education teachers and master instructors.

Our association has worked for many years with the government and, sure enough, we got tired because we got nowhere. We had Bill 141, which was supposed to regulate the industry. It had one reading and it did not get through.

We are opposed to what the DSAO is trying to do now. It is, in our view, for publicity reasons only. What will it do to a man like myself? I have been involved since 1943 in driver education. I have spent 30 years here. I have been licensed by the government as an instructor. I am qualified to teach in high school programs. I have been one of three people who were called upon by George Brown College and the ministry to teach chief instructors, some of whom are here.

I have listened carefully to Mr. Andrunyk from the Ontario Safety League, and I know we had meetings before on Bill 141, which then did not get through. My question is: I am not sure whether Mr. Andrunyk proposed that the government should do the same thing as Bill 141 wanted to do, which we were in support of. We worked very hard on it. At that time, there was no one from the Driving School Association of Ontario to promote it.

Mr. Andrunyk just mentioned that there are about 60,000. I want to quote that in Ontario there are about 230,000 new drivers. About 60,000 of those drivers take formal instruction from driving schools and 65,000 through high schools. I believe I mentioned before that I have been involved now for over 20 years in high school driver education.

We follow the Ontario government's only curriculum, and it specifies that we must teach a minimum of 25 hours in high schools and that we must teach young people a minimum of 10 hours behind the wheel in an automatic car and 12 hours behind the wheel in a manual shift car. We are doing this. We are using the same curriculum in the private driving schools we represent. We have had an approval system in opposition to the Ontario Safety League for the last 18 years, and we have been discriminated against through the years by some major insurance companies who would not recognize our certificate.

Mr. Swart: They are a bad bunch.

Mr. Burger: I am not a politician and I have family in the industry. I am very biased, so I will not comment on that. I respect decent insurance people, too. I also respect the DSAO, but we cannot go along with them.

I had the president of our association here. He had to leave because he got ill. I had one instructor with me here who has taught for 31 years and

represents the instructors. He had to leave. They have to make a living. We do not have the time to run from one office to another. I could quote the Driving School Association of Ontario, which said, "We get a runaround from one office to another." I have not complained.

I am suggesting here and now that the only way driver education can be improved in this province is by the government of this province, not by private enterprise. What this bill tries to do is to give someone what we have already. I am a graduate of the Ontario Safety League in the early 1960s. In Europe I graduated in business and I also graduated as a driving instructor. I have certificates from the Ontario government as a senior instructor. I have certificates from the Ontario government as an instructor. What will that make me?

Mr. Andrunyk states--I have a quote here--that the bill is not right because it does not give the association any ability to convict someone who is using them. Can we not then apply--he mentioned it--and bring in the same bill? We are the oldest functioning organization in this province, and I believe we represent more members than the DSAO. I have seen a whole army here from the DSAO, because they are very much interested in having their pictures in our news media tomorrow concerning what the DSAO is going to do. Why, then, does the DSAO not follow the only curriculum the Ontario government ever approved? They have approved it for the high school program, and if it is the best for the high school program, should it not be the best for the public of Ontario? I believe so.

Our classrooms which we have approved--and there are 12 in Metro Toronto alone--are required to meet those standards. We have tests and we have information from driving schools which are approved under the DSAO or the safety league, and some of them are eight hours long, some are eight and a half hours, others are nine and a half hours. No one is at the minimum standard of Ontario.

I hope the committee will look at this. If this committee and the government intend to improve driver education, I am very much interested. I believe you know I am a senior citizen and some people would like to see me out of the industry, but I am not finished yet.

I remember very well former Premier Davis when he said, on December 31, 1976, "The right to work without pressure or interference from any source is a basic right of all Canadians, and the government must protect it." This is a quote from the former Premier in his New Year's message. I believe that our Premier (Mr. Peterson) now will feel the same way, and I intend to write a brief to the Premier.

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Mr. Chairman: Thank you very much, Mr. Burger. Please keep your seat. Are there any other persons present who wish to make a presentation to this bill? I do not see anybody else, so I will ask Mr. Andrunyk to come back and join us at one of the seats in front of me because I suspect there may be questions posed by members of the committee. If Mr. Ferraro wishes to join them, he certainly may.

I would like to ask the representative from the government, Mr. Haggerty, if he can tell us whether contrary opinions have been expressed to the government and if the government has any other observations to make.



Mr. Haggerty: I am not aware of that, but I was looking at the preamble where it says "carrying out the objects of the association and of the government and discipline of its members." Maybe the question is: Should the word "government" be in there? If it is a disciplinary body that they are looking for, maybe it should be "governing body." I can only assume that if there is any other legislation--surely the government is involved under regulations?

Mr. Chairman: Do you have comments on that, Tannis?

Clerk of the Committee: The preamble has standard wording but if there is any confusion, we can certainly change it. But it means the government of its members.

Mr. Haggerty: Is that the intent?

Clerk of the Committee: It is just another way of expressing how they are governing their organization. It is the government of the members. It modifies members.

Mr. Chairman: Not be be confused with the government of Ontario.

Clerk of the Committee: No. It is just a general word to describe the government and discipline of its members.

Mr. Haggerty: Are you suggesting that is the right grammar then?

Clerk of the Committee: It is right grammatically. If there is some confusion with the word "government," we would never say "government." We would say "government of Ontario." if we intended the government of Ontario. Here it is certainly meant to be a normal noun meaning the governing of the society.

Mr. Chairman: That is certainly the way I had read it.

Perhaps before I go to questions or comments from the committee members, it might be appropriate to allow a moment of reply to any issue raised by the two gentlemen raising questions about the matter. I would ask you not to go over ground we have already covered but just to reply to matters that were raised.

Mr. Kennaley: Certainly, Mr. Chairman. Thank you. I will start with Mr. Burger's comments. He made a very compelling presentation. I do not know him but I know of his activities from having worked for the association for some considerable time. I would like to make the following points.

First, the Canadian Professional Drivers' Education Association holds itself out to be a federal body and not a provincial body. I think that is important and relevant to the situation here in Ontario. He asked the question of what it will do to people like him. I am not sure what the context of his question is. But if it is considered by him to somehow or other exclude him or people like him, or any individuals for that matter, from practising their profession, section 9 makes it perfectly clear that cannot happen. The DSAO will not have any authority whatever to stop people from practising or carrying out their work as a driving school or as a driving instructor. Indeed, the government does not want it that way.

Second, the curriculum is not at all at issue. The curriculum is defined by the Ministry of Transportation. It sets minimum standards, and all courses

and instructors must meet those standards. It issues the licences, and that is laid down in section 464 of the Highway Traffic Act. We do not have any argument with that point. In fact, section 8 of the bill specifically states that a member of the association who uses the designations must hold an instructor's licence.

To address Mr. Burger's comment on government regulation, I think we have dealt with that a couple of times through my presentation and I do not think that the government will change its point of view. I cannot speak for the government, of course, but we have had very intensive discussions about this bill with the government over a very long period of time. In fact, it has been a year since we started discussing the actual bill. The government's position was made clear to us right from the beginning, and we concur with that position.

As I pointed out in my opening remarks, the bill only prohibits the use of the designation by people who are not competent to use it, people who do not comply with the bylaws. That is spoken to in subsection 8(2). That is the only prohibition in the bill.

My final remark with respect to Mr. Burger's comments is that the DSAO is an association into which people enter quite freely and leave quite freely. In the three years that I have been working for the association, there have been a lot of people come and go for one reason or another. I think it is important to emphasize that point because Mr. Burger is obviously concerned about it. It is a freely entered into association, and this bill--I think even the language in this bill; I am not a lawyer, incidentally--does not do anything to change that situation.

Mr. Ferraro: If I could just interject a couple of minor points to clarify the situation, the photo opportunity was my idea. It has nothing to do with the delegation. I thought it would be nice to have a picture of the association for its respective members.

The other thing I would like to say, which Mr. Kennaley alluded to, was that the bill does not preclude anyone. I do not think anybody would agree to precluding anyone who is qualified, according to this government's standards, from practising his or her trade. This bill does not do that. It establishes an Ontario association which, I believe, is not unusual. I think most members can think of several in the same context. I understand membership is somewhere around \$30.

Mr. Chairman: One point we are dealing with that I at least am not clear on is this issue of accreditation. Is it the representation of anybody here that there are people in Ontario not currently members of the association who do use a title, such as "accredited driving instructor," for the purposes of assisting themselves with their occupation?

Mr. Kennaley: I am not aware of anyone who does.

Mr. Andrunyk: Anybody who completes a four-week, 130-hour course as set out in the government syllabus--the course can only be conducted by a chief instructor qualified by the ministry--gets a licence to be a driving instructor. To all intents and purposes, as far as I am concerned, that person is accredited by the government of Ontario to be a driving instructor.

Mr. Chairman: I hear you but I do not know if it quite answers the question I raised. Is anybody actually using the title?



Mr. Burger: I did point out that I am holding a certificate from the Ontario government, signed by the former minister James Snow, as a senior driving instructor. Mr. Andrunyk mentioned 130 hours. Yes, we did that under the government regulation.

If you allow me to mention it, I will give you a precedent that happened in 1966. At that time, Mr. Andrunyk was not involved with the Ontario Safety League. The safety league went to the Metro Licensing Commission to have all driving instructors retested. I have now been licensed for 30 years in this province. We took it to court. It took us five minutes, and the judge said, "You are licensed under section 40 of chapter 198 and no other organization can retest you." We won that case.

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I feel this is similar. I claim the names which I have said. We have master instructors, and our course was not done by a chief instructor. It was done by a master instructor.

Mr. Chairman: OK, but I am not sure that you have given a direct answer to my question. Can counsel help us?

Mr. Strauss: I am Earl Strauss, legal counsel, companies branch. If I might clarify the matter of statutory interpretation for the members, subsection 8(1) sets out two criteria on the basis of which someone may use the designations set out in clause (a) and clause (b): One, the person must be a registered member of the association; two, the person must hold a licence from the ministry driver education course.

It does not say that simply holding a Ministry of Transportation driving instructor's licence would entitle the person to become a member of this association. That is a minimum requirement but it is not the only requirement, the conclusion being that there may be people being licensed by the ministry to carry on the business of a driving instructor who are not members of this association.

That is what section 9 of the act permits. It permits people like Mr. Burger and Mr. Andrunyk to continue carrying on their businesses as licensed driving instructors, provided they do not use the designations set out in clause (a) or clause (b).

Mr. Chairman: Can you tell me what the legislation or regulation is that apparently prescribes that you have to be a member and you have to have a licence?

Mr. Strauss: It is the bill itself.

Mr. Chairman: Perhaps I misunderstood.

Mr. Strauss: It is subsection 8(1).

Mr. Chairman: Is there no provision in the current law that deals with this at all, no current law that deals with this issue? I am a little unsure yet whether there is anybody in Ontario who is going around saying, "I am an accredited driving instructor," having already been licensed by the province. I think that is the heart of that issue.

Mr. Kennaley: The only requirement, as Mr. Andrunyk has pointed out, is that driving instructors have to hold a licence issued under the Highway

Traffic Act but, as far as we know, this is one of the reasons why this particular set of designations was selected to go with the membership in the association. As far as we know, nobody is currently using those particular designations. We were advised at one point that there are some certified driving instructors or people advertising themselves as certified driving instructors, but not accredited.

Mr. Swart: I think you put your finger on the crux of the issue that is before us, Mr. Chairman. I find myself in some difficulty making up my mind.

On the one hand, I think there is real value to an association such as yours but I also believe that terminology and designations have to have some general meaning to the public. You have mentioned that some people are saying they are certified driving instructors or a certified driving school--I am not sure what it is--but the public out there generally interpret some of the terminology, such as the word "accredited," to mean accredited by the government. They are given some stature over and above even an accredited chief instructor, particularly an accredited driving school. That conveys to the public out there some special status.

I think those who are promoting this bill would agree here today that there may be other driving schools that decided not to join the association but that could be just as competent driving schools and have as high qualifications as one which had been accredited. It seems to me there is something missing in this bill. It is important to have qualifications and it is important for those qualifications to be represented by designations, but I am not sure we want those designations tied particularly to membership in an association.

Many professional organizations, of course--and I will go right to the top, to the medical profession--there is the Ontario Medical Association but there is also the College of Physicians and Surgeons of Ontario. The dentists do the same. All these groups have a special licensing body and a body that sets up the accreditation.

I think that any accreditation should be set up on a general basis, not just by an association. What happens if a person is an accredited senior instructor or accredited chief instructor or operates an accredited driving school and, all of a sudden, decides not to have membership in the association? There can be a variety of reasons. There may be conflicts. It may have nothing to do with their qualifications. Do they have to take down the signs they have had out in front which say "accredited driving school"?

It seems to me their qualifications should be the criterion that determines whether they get accreditation. I think there is some danger in proceeding with this bill as it is proposed. The first note I made when I read the bill and the explanation was, "Why is this not a public bill?" It does deal to a substantial degree with public policy, with the public out there. Accreditation means something to them.

On the other hand, I am very much in support of associations. I think they can raise the level of qualifications of their membership. But I think when you come to the whole issue of the accreditation, being able to use the terminology and so on, it should really convey the message to the public that these people have some special qualifications. It does not under this bill. You have other people with just as good qualifications who will not have this accreditation. That is the thing that worries me. I think, Mr. Chairman, you alluded to that in your comments.



Mr. Sola: First, what is the current title of someone who passes an Ontario driving instructor's course?

Mr. Kennaley: He is a driving instructor.

Mr. Sola: Just driving instructor, not accredited, not certified?

Mr. Burger: It says "driving instructor," signed by the minister.

Mr. Sola: OK. So everybody gets that, no matter what association he belongs to.

Mr. Burger: That is correct.

Mr. Sola: Second, it says here that approximately 200 driving schools are not in the DSAO. Do they belong to any other associations? How many associations are there in total?

Mr. Burger: Two.

Mr. Sola: Just two.

Mr. Burger: May I interject, Mr. Chairman? We are not a federal body. We have a corporation title from Ontario and we founded the organization here in Ontario, nowhere else. We are an Ontario-based organization. Although we have one member in Yellowknife, we are still an Ontario association.

Mr. Sola: In other words, these 200 driving schools would be members of your association?

Mr. Burger: At one time I may say we had 555 members.

Mr. Sola: You are not answering my question. What about today?

Mr. Burger: Yes, I will, sir. We have 258 members. They comprise the majority of driving schools, driving instructors and mass instructors in schools.

Mr. Sola: I am not asking about memberships as individuals but memberships as schools. From what I understood from your dissertation, sir, there are 200 driving schools in Ontario that are not part of your organization. Is that right?

Mr. Burger: I did not make that statement.

Mr. Andrunyk: I made the statement. I have a document for the government. No one in Ontario really knows how many schools there are. They are not registered. Some regions and municipalities require people to meet certain standards. In most places, if you have a driver instructor's licence, you go to register, pay a \$25 municipal licence, and you are in the driving school business, but no one registers you. There are estimated to be 300 driving schools in Ontario. Some 120 belong to the Driving School Association of Ontario. I am not so sure how many belong to Mr. Burger's association.

Mr. Burger: If I may, 158.

Mr. Andrunyk: The others are independent who prefer not to belong to anybody. They are independent, operating on their own as a one-car operation out of their basement, out of their living room, whatever.

Mr. Sola: As far as I see it, the problem here arises under subsection 8(2) and section 9. According to this bill, the DSAO does not want to prevent anybody else from driving. All it is complaining about is the accreditation they use on their driving instructor's insignia, ADS, accredited driving school. You are just complaining about the designation, the accreditation. Is that right?

Mr. Kennaley: We are not complaining about the designation; we are promoting the designation.

Mr. Sola: Right, you are trying to make it--

Mr. Kennaley: Mr. Burger, I gather, is complaining about the designation.

Mr. Sola: If you are not against somebody else driving and you just want these accreditations associated with your association, I think it will just create confusion in the eyes of the public to have too many designations for the same jobs.

Mr. Kennaley: if I could respond to that, Mr. Chairman--

Mr. Chairman: I am delighted there is now a response through the chair. Go ahead.

Mr. Kennaley: I think there are many precedents in the province for what we are proposing here, one of them being the people who hold themselves out to be accountants, for example. There are three separate associations of accountants and they all operate under private legislation. Bill Pr65, I think, is one of them. It was passed recently, about two years ago.

I cannot agree with the member's position that there would be confusion. The point is, of course, to not have confusion. The people who would use this designation would be people who hold a valid driving instructor's licence issued by the ministry--the one Mr. Burger just held up a copy of; that is a requirement--plus whatever other criteria the bylaws of the association, as they will eventually be written, will lay out.

It may require the payment of fees and it may require certain experience levels; I do not know. I am not a driving instructor and I am not that familiar with the actual workings of the thing, but it does not stop anyone from operating a driving school or from working as a driving instructor. That is a key element of this.

Mr. Chairman: I would like to draw to the attention of the committee that I now have at least one more citizen in front of us who wants to comment on the matter currently under discussion. I have Mr. Beer and Mr. McCague on the list for whatever questions they may have. I sense that this may go on for a little while. I notice Mr. Morin and I believe it is Ms. Sherwood, who is probably from Ottawa or that vicinity, looking very anxious at the length of time this has taken. We are now 15 minutes past their ordinarily scheduled time, so I am wondering whether you would be willing, with unanimous consent, to interrupt the current proceeding to allow Bill Pr12 to be dealt with.



Mr. McCague: I am sorry to go ahead of a couple of my colleagues; however, this is a difficult issue we are involved with. We have a bill before us for consideration and we have obviously other opinions from other professional associations. We do not have anybody here from the ministry. It will be my respectful suggestion that as inconvenient as it may be, this group be called back as early in the new year as possible and that we do have the ministry here, at a high level, to iron out this matter and let them wash some of their laundry in the meantime.

Mr. Ferraro: Mr. Chairman, if I may--

Mr. Chairman: Mr. Morin is not getting much closer to this table.

Mr. Ferraro: I apologize for that. I respect what my colleague Mr. McCague is saying, but with great respect we have the parliamentary assistant to the minister, Mr. Haggerty, here who has already indicated to the committee that the government is not in opposition to this bill as it was presented and discussed by them. I do not wish to speak for Mr. Haggerty, but I thought he made that perfectly clear. I would point out to the committee, as we already have alluded to earlier this morning, the tremendous expense involved in procrastination.

I conclude my comments by saying that I understand the sensitivity and concern that certain members have about designating people. I could go on and ramble on for five minutes about the number of associations that have certain designations, including MPPs. We will not mention QCs for the benefit of Mr. McCague.

Having said this, it does not help matters any. I would just say in conclusion that even with respect to Mr. Burger, his designation is Canadian Professional Driver Education Association member. Does this mean that those who are not members are not professional? I am sensitive to what Mr. Sola said.

I just conclude by saying that I hope the committee can deal with it today.

Mr. Chairman: I hear you. I did not understand Mr. McCague's comment to be a motion. I would like to go back to my question about Bill Prl2. Is it the will of this committee to have this matter interrupted long enough to deal with Bill Prl2?

Mr. Swart: I think we should determine whether we are going to proceed with this now. I cannot anticipate that even after we deal with Bill Prl2, we are going to be able to conclude this bill here, in fact before the session starts at 1:30 p.m. I do not think there is any alternative but to table this discussion at the present time. I think Mr. McCague has made a good suggestion. If I were dealing with this, I would want the opportunity to prepare a number of amendments. They have to be pretty clearly thought out and go to legal counsel.

I think the best thing might be to table this bill. Then we could bring it up again next week if we do not have a number of other private members' bills. We could determine in what direction we want to go from there. I do not want to kill it. I think we have to delay it because we are not going to come to a conclusion on it today.

I move that this bill be tabled.

Mr. Chairman: I take it you are proposing to table it for a week.

Mr. Swart: I am proposing to table it for a week. I do not know what will be on the agenda next week. I will bring it up personally if I am here, if we can fit it into the agenda. That would be my intention, to table it for a week, but I think the motion maybe just should say "table it."

Mr. Chairman: The reason I raise the issue is simply because we will ordinarily be dealing with our schedule the following week at each meeting.

Mr. Swart: Can I move it this way then, that I will table it with the intention of dealing with the procedures pertaining to the bill at our next meeting.

Mr. Haggerty: Just on the point Mr. McCague brought to the attention of the committee, I must remind committee members that this is not a new bill. This is a bill that was approved by legislation back in 1979. This is a continuation of the existing Driving School Association of Ontario. Maybe that is why there has been no objection from the Ministry of Transportation.

Mr. Chairman: I understand your point.

Mr. Beer: In terms of the intent and the desire of what is sought here, I think there is a tremendous amount of good. I think a number of issues have been raised, quite legitimately, about public policy and what we are doing with a private association. I have to say though that I have questions. I simply find that I have to agree with Mr. McCague and Mr. Swart. There are some things I still need to go through and wrestle with. I am by no means saying I am opposed to this. I think there is an awful lot that is here, but it does seem to me that it raises a number of questions which if we could get through, we could have a successful resolution. The dilemma at this point is time.

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Also, I would like to put other questions to the Ministry of Transportation to get a clearer understanding of where it is heading. For that reason, I believe we are going to need another session to deal with it. I want to underline that it is not because I think the direction or the need is necessarily at fault, but I do not think we are there yet. I am just concerned about some of the questions that have been raised. I feel we need to deal with them and I would support Mr. Swart's motion.

Mr. Chairman: Are there any other comments by members of the committee? I take it Mr. Swart is amenable to restating the motion as a question of deferral as opposed to tabling.

Mr. Swart: Yes, this is satisfactory. I move that consideration of Bill Pr7 be deferred until our next regular meeting.

I had moved that it be tabled with the intention that the procedures will be determined at our next regular meeting. Maybe I really should put it that way, because this could leave the impression with these people that we are going to deal with it and make a decision on it next week. I doubt we will be doing that. What I intend to do is have us deal with the procedures and how we are going to deal with this matter. We will make a determination at some point, but I doubt if we will make that determination next week.



I move that it be tabled with the intention of determining the procedures to deal with Bill Pr7 at our next regular meeting.

Mr. Chairman: I might provide some assistance to the committee. The question of deferral, if it is accepted by the committee, will mean that the matter comes up next week. Whether the committee chooses to deal substantively or procedurally is a separate issue. The committee might choose to agree with Mr. Swart or it might not. I do not know what it would do next week.

Mr. McCague: My intention, in raising the issue in the first place, was that the matter be deferred and that these people be called back at a time that would be set by the committee.

Mr. Swart: That really is the interpretation of my motion. Its intention is to deal with procedures next week. I do not want these people to have to come back. I do not know how far some of them may have to come to come back here and all we are going to deal with is the matter of procedures. They are welcome to be here. Anybody is welcome to be in on these committees, but I do not think there will be a determination made next week. That is why I am tabling it. It is the same thing as Mr. McCague is saying. I am just putting it in a motion that way.

Interjection.

Mr. Chairman: I will not go on too long.

Mr. Kennaley: Would it be out of order to get off the record?

Mr. Chairman: Yes, it would be out of order. I am not going to deal with that.

We are now going to have a vote on the motion for deferral, there having been a fair bit of discussion.

Mr. Ferraro: Excuse me, on a point of order, Mr. Chairman: With respect, you are moving a motion on deferral. Are you having a specific time line indicated? If so, I think it is perhaps appropriate to have a comment from the delegation which, as Mr. Swart has indicated, has come from all parts of the province today.

Mr. Chairman: I take it that the question of--

Mr. Ferraro: To give them an idea of exactly what the motion is referring to.

Mr. Chairman: I take it that the motion for deferral is a motion so the committee can deal with how we are going to deal with the bill. That is how I hear it.

Mr. Ferraro: Could I, and I will be quiet after this, ask the chair to address some concerns the delegation may have as far as the deferral is concerned? It may not want a deferral, in which case your problem is very easy.

Mr. Chairman: They can always withdraw.

Mr. Ferraro: All I am saying is that I do not think it is out of order to hear a comment from the delegation.

Mr. Chairman: I would like very much to deal briefly with the motion before us, as opposed to the issue of merits.

Mr. Kennaley: As I understand it, the committee will only be sitting for one or two more sessions this year and then it will not sit again until June. As I understand Mr. Swart's motion, this thing could be deferred for another six or eight months, and we have already been dealing with it at the ministry level for a year now.

Mr. Chairman: Might I suggest your odds in getting it through today, in any event, are not great. As I hear the comments from the committee--and I do not know that assuming it will go to June is correct. I cannot tell you it is going to come before June and give you a guarantee of it. My sense of the thing is it is not going to take you until June to have another hearing, because I suspect the Legislature will come back before then, and this committee, at the very least, will be meeting while the Legislature is in session.

In addition, we have requested permission from the Legislature to sit between sessions. Should that permission be granted, it is possible, if the committee sees fit, it will be dealt with then. I suspect the process will be, if the motion to defer goes through, that we will talk about it a little next week when we have had time to think about what we are looking for and, at that point, probably make some sense of a determination of where we think the questions may go. During that time, each of the various parties who come before us will probably think about where they can get either further support, or alliance, or whatever, from whomever. Through the clerk, a target date will be set that will be agreeable. I am certain that nobody desires to prejudice the ability of the applicants here to be heard.

Mr. Burgess: Can I have a minute?

Mr. Chairman: Not on something new, no. I want to deal with the motion to defer.

I have had a call for the question. All those in favour of the motion to defer? All those opposed? There being no opposed, it has been carried.

Motion agreed to.

Mr. Chairman: Thank you very much gentlemen. The clerk will let you know what the outcome is. It is not expected that you will be returning next week. You can, but you are not obliged to.

Mr. Swart: I was just going to ask you to make that statement.

#### CENTRE FOR EDUCATIVE GROWTH ACT

Consideration of Bill Pr12, an Act to revive the Centre for Educative Growth.

Mr. Chairman: Mr. Morin and, I believe it is Miss Sherwood.

Miss Sherwood: Yes.

Mr. Chairman: First of all, congratulations on lasting this long without nourishment. Will you please introduce yourselves to the committee in a formal way and advise us what Bill Pr12 is all about.



Mr. Morin: If you want to bring order first so I can hear you, it would be better.

Mr. Chairman: Thank you very much, Mr. Morin. Ladies and gentlemen, you are welcome to have discussions but, please, outside the room.

Mr. Morin: I want to congratulate you for the excellent job that you have been doing. I have had all the time to observe you and I give you an A-plus.

My name is Gilles Morin and I am the member for Carleton East. The matter before you is uncomplicated. It is simply an administrative error. I am very pleased to sponsor Bill Prl2, an Act to revive the Centre for Educative Growth.

John Legg and Fred Gillespie were to be here this morning but could not make it; therefore Miss Lynn Sherwood is with us.

The preamble of the bill explains: "The Centre for Educative Growth...was incorporated by letters patent dated November 12, 1973." The then "Minister of Consumer and Commercial Relations by order dated September 8, 1982...cancelled the certificate of incorporation of the corporation for failure to comply with the Corporations Information Act...and declared the corporation to be dissolved on September 8, 1982; that the applicants were directors in good standing of the corporation at the time of its dissolution; that notice of default in filing annual returns, although sent to each of the applicants as directors, was not received by any of them and none of them was aware of the dissolution of the corporation until more than two years after the date thereof; that the corporation, at the time of its dissolution was carrying on its activities and has continued to carry on its activities in the name of the corporation since the time of its dissolution; and whereas the applicants hereby apply for special legislation reviving the corporation; and whereas it is expedient to grant the application...."

Interjection.

Mr. Morin: It was an administrative error. Therefore, this is the reason we appeared before you, and if you have any questions, Ms. Sherwood would be very pleased to answer them.

Mr. Chairman: Ms. Sherwood, you are not obliged to make comment at this time, but you are welcome to if you wish.

Ms. Sherwood: I guess I should just say that I am the new executive director. We found out that the filing had not been complete last year. We discovered the loss of corporate status and have taken immediate measures to rectify that.

Our corporation has continued to be licensed and funded by the Ministry of Community and Social Services under the Child and Family Services Act, and we presently are serving 18 children, eight of whom are in the residence itself. We do see it as an administrative oversight that we would like to have corrected.

Mr. Chairman: Mr. Haggerty, is there any commentary from the ministry?

Mr. Haggerty: The ministry has no objections to it. We note in the compendium that the Ministry of Consumer and Commercial Relations indicates

default on filing the information returns. All they are trying to do now is re-establish the charitable organization, and the minister has no objections to that.

Mr. Chairman: If I might ask, before I go to Mr. Swart, is there any pending litigation that involves the corporation now, to your knowledge, Ms. Sherwood?

Ms. Sherwood: No.

Mr. Swart: I just wanted to move that the bill be reported and that any costs be waived with the exception of the printing of the bill.

Sections 1 to 3, inclusive, agreed to.

Bill Prl2 agreed to.

Bill ordered to be reported.

Mr. Chairman: I would like to indicate on the record at this point for the purpose of clarifying the procedural steps with the committee--by the way, you are excused, I guess, if that is the right word. Thank you.

Mr. Morin: Thank you.

Mr. Chairman: For the purposes of the committee, I have reflected on the procedural steps that I took in the ruling I made earlier today with respect to the way in which motions can be put, and there seems to be a certain conundrum in terms of traditional procedure.

If there is a motion put, as there was on this last bill, to deal with the whole of the bill and report all at one time, and there is a member of the committee, possibly a majority of the committee, who prefers to have the bill amended before being reported, the moving of a motion in the first instance effectively precludes them from having an opportunity to put that amendment on the floor.

So the chair is then in the unenviable position of either saying that the amendment is out of order because the members who seek to have any amendment simply did not get recognized first, not because of merit or, alternatively, having a motion on the floor which deals with the whole of the bill and reporting it back and then having an amendment to that for the purpose of having the bill reported in an amended form.

It was my view that, given those two unenviable positions, I chose--and I think I would probably choose again, subject to further advice I may receive--to allow an amendment, it being clear that the purpose of the amendment is not to have the whole matter defeated. If somebody wants an amendment to merely defeat something, he can vote against the motion.

I am open, I must say, to receiving either comments now or afterwards from legal counsel or from whomever, but there is a bit of a conundrum and there seems to be a bit of a hole in terms of the way the rules are written up.

Mr. Sola: I would just suggest, before we get to the vote, that you ask, "Are there any amendments?" because I was late with that first one, figuring it was another comment or another question, and with the second one, I jumped in fast so that it would not happen again.



Mr. Chairman: I appreciate your comments and I will go to Mr. Swart and Mr. McCague; but the problem I have is as the chair. While I agree it would be easier if I could find out by agreement of all who are present in the committee if there a problem with any particular section, I would deal with the problem sections first. Then I would deal with everything else.

While that is a preferable course of action, and I would ordinarily try to do that, there is nothing out of order, as far as I can determine, with the member proposing the whole bill be reported, as is, and that is the problem that I would have.

Mr. Swart: I think the suggestion that you make is the cleanest way of dealing with this. I would have to point out, though, that there is nothing out of order if a motion is made that the bill be reported as printed by somebody moving, "Except that clause so and so be amended in such and such a manner."

I do not think there is anything out of order in that. It is a perfectly legitimate motion. So it can be dealt with if somebody moves that the bill be reported immediately before there is any discussion. Of course, first you have the right to say, "I do not want to accept that motion until we have had the discussion to see if there are any amendments." That is quite appropriate, but if somebody does move it and accept it, I do not see any reason why you cannot put that "except that clause--"

Mr. Chairman: Mr. Swart, that sounds logical; but you will be fascinated to know that in the standing committee procedure prepared to guide the chairman, on page 21, it says that what you have just indicated is, in fact, not proper.

I do not know who originated the rule. I assume that when this was written it was considered to be authoritative, it having been written by the assistant clerk.

Mr. Swart: I want to look at that section.

Mr. Chairman: I will read it into the record. It says on page 21:

"When a committee is considering a bill, an amendment to leave out a clause is not in order, as the proper course is to vote against the clause standing part of the bill."

As I say, that is what puts me back to the conundrum: whoever first catches my eye may prevent the will of the majority of the committee from being held unless you rule as I did earlier today.

Mr. McCague: I think the record will show that what happened earlier today was that I did you the courtesy of asking you if you were ready for a motion. You did the members of the committee a courtesy by asking them, "Is there any further discussion." Seeing none, you asked me to put my motion, which I did.

Mr. Chairman: That is true.

Mr. McCague: I was not trying to jump a gun. You are not accusing me of that.

Mr. Chairman: I did not ascribe any--

Mr. McCague: No. However, I think what you should do as chairman is find out what is right and tell us what is right, and then we will abide by the rules.

Mr. Chairman: That is why I am having this discussion now. I think that what is in fact correct as a matter of procedure is what I did, which I did for two reasons. The reason I had indicated is one, but also, frankly, it is faster doing it the way I did it, to allow a motion to come forward. Then, if there are one or two amendments, to let that happen.

In the instance of the bill which we deferred, I suspect, nobody would move the motion initially since it was obvious there was great concern, even if we had gotten to the point where we were prepared to make a decision. I want to confirm that I ascribe no bad motive in the least to Mr. McCague or to anybody else here.

That is how I will intend to proceed. If I get strong advice to the contrary, I will tell the members.

Mr. McCague: I think you should seek advice, because a lot of the rules around here are made by committees of the Legislature and I am not sure what happened in this particular case, but I think it would be wise for us for you, on our behalf and for your own information, to find out what you can do and what you cannot do, as it applies to what you have just discussed and also as it applies to quorum.

I think you should apprise us next week of your findings, so we all know. I do not think on matters that are as the result of a report, or whatever, of the Legislature that we should be altering that, even though it may look a little more expeditious to do it in a particular way.

Mr. Chairman: I hear you. I am prepared to undertake to do that, and I will report back, I hope, on this topic at the very next meeting. Thank you. I take it we have a motion to adjourn that is accepted by all who are here, but leaving quickly.

The committee adjourned at 12:40 p.m.





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STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

ORGANIZATION

YORK FIRE & CASUALTY INSURANCE COMPANY ACT

CONRAD GREBEL COLLEGE ACT

OTTAWA CIVIL SERVICE RECREATIONAL ASSOCIATION ACT

DRIVING SCHOOL ASSOCIATION OF ONTARIO ACT

WEDNESDAY, DECEMBER 9, 1987





STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

CHAIRMAN: Fleet, David (High Park-Swansea L)

VICE-CHAIRMAN: Beer, Charles (York North L)

Cleary, John C. (Cornwall L)

Fawcett, Joan M. (Northumberland L)

McCague, George R. (Simcoe West PC)

Pollock, Jim (Hastings-Peterborough PC)

Pouliot, Gilles (Lake Nipigon NDP)

Ruprecht, Tony (Parkdale L)

Smith, David W. (Lambton L)

Sola, John (Mississauga East L)

Swart, Mel (Welland-Thorold NDP)

Substitutions:

Campbell, Sterling (Sudbury L) for Mrs. Fawcett

Miclash, Frank (Kenora L) for Mr. Ruprecht

Also taking part:

Chiarelli, Robert (Ottawa West L)

Cousens, W. Donald (Markham PC)

Epp, Herbert A. (Waterloo North L)

McGuinty, Dalton J. (Ottawa South L)

Sterling, Norman W. (Carleton PC)

Clerk: Manikel, Tannis

Staff:

Mifsud, Lucinda, Legislative Counsel

Witnesses:

From the Ministry of Consumer and Commercial Relations:

Levine, Katherine, Solicitor, Companies Branch

Haggerty, Ray, Parliamentary Assistant to the Minister of Consumer and  
Commercial Relations (Niagara South L)

From the Ministry of Municipal Affairs:

Neumann, David E., Parliamentary Assistant to the Minister of Municipal  
Affairs (Brantford L)

Chipman, John G., General Counsel, Municipal Affairs

From the York Fire and Casualty Insurance Co.:

Thompson, Murray A., Legal Counsel; with Blaney, McMurtry, Stapells

From Conrad Grebel College:

Haney, R. A., Legal Counsel; with Haney, White, Ostner, English and Linton  
Sawatsky, Dr. R., Vice-President

From the Ottawa Civil Service Recreational Association:

Denison, W. Terrance, Legal Counsel; with Perley-Robertson, Panet, Hill and  
McDougall

Sheeley, Gratton, General Manager

From the Driving School Association of Ontario Inc.:

Kennaley, William, Government Relations Consultant

LEGISLATIVE ASSEMBLY OF ONTARIO  
STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Wednesday, December 9, 1987

The committee met at 10:14 a.m. in room 151.

Mr. Chairman: Ladies and gentlemen, members of the committee, we can get started. I see a quorum. To begin with, I would like to deal with two procedural matters arising from our meeting last week.

I undertook to make inquiries as to procedures for voting on sections of private bills and also to report to you about what constitutes a quorum. I have not received a copy of the transcript from that meeting, but I think all who were present understand the issues that came up that day.

With respect to a quorum, the rules are fairly clear under the standing orders, standing order 99(a) in particular, which says: "A majority of the members of a standing or a select committee, including the chairman, shall constitute a quorum."

It is a numerical determination and membership from other parties is not considered part of a quorum in the standing orders. Having said that, I understand it is the custom, a custom I believe is important and which I will respect, that the committee ought not to commence proceedings, in the ordinary course, without at least one representative from each party. That is something which has been observed, as I understand it, from time immemorial. If it is not written in the rules, it might just as well be. I intend to proceed on that basis.

I also point out, however, that standing order 99(b) says, "Any committee may authorize the chairman to hold meetings to receive evidence when a quorum is not present." Do I have motion with respect to that matter?

Mr. Beer moves that following the words, "The chairman is authorized to commence meetings of this committee when a quorum is not present," the following be added, "provided there are representatives of all parties present in addition to the chairman."

Any comment about the motion?

Mr. Campbell: The question is, what is the validity of the committee hearings and subsequent business taking place if a quorum is not present.

Mr. Chairman: I understand that the evidence can be received, but there would not be a vote until a quorum was present. Once a quorum is present, the chairman is presumed to continue to have a quorum unless somebody on the committee draws to the attention of the chairman that there is not a quorum.

Mr. Campbell: So we are in a hearing body situation then at that point in time.

Mr. Chairman: At that point, that is right.



Mr. Swart: As one who has sat on these committees for quite a while--and my colleagues who have been here for a while will probably agree with me--the practice has been that if you see a quorum, and that has normally consisted of at least one member from each party, there is a quorum unless somebody draws attention to that matter.

I have real reservations about a resolution which goes counter to the rules of procedure, and I would think we should follow on with the practice we have had--I may be wrong in this, but it has certainly been my experience over the years--which is that if you see a quorum and there is no objection, we have a quorum. That is what happens in the House, as you well know.

Mr. Chairman: I am content. I understood this resolution would be consistent with the practice. In fact, it is the practice. That is what the resolution amounts to, but I am in your hands.

Mr. Swart: But is that resolution not contrary to the rules of procedure in the House where you need a quorum?

Mr. Chairman: No. In fact, it is contemplated by the standing orders and it is the practice, as I understand it, which is that I would recognize a quorum when I see somebody here from each party.

Mr. Swart: I am not objecting to the principle, and I think you know that, Mr. Chairman.

Mr. Chairman: I understand.

Mr. Swart: What I am really saying is, as it has already been said, that we cannot deal with matters unless there is in reality a quorum, but if you see a quorum and nobody objects to it, the same as in the Legislature, we can go on and operate normally in dealing with issues. You may find out that becomes a real problem if we are going to stick to that policy, that we may not be able to deal with issues when people are here.

Mr. Chairman: It is a recommendation as to the quality of my eyesight on occasion, I take it. I hear you and I appreciate that.

Mr. Beer: I see the point in recommending what I recommended. At the same time, as a believer in tradition and listening to Mr. Swart, I am wondering whether perhaps if we were to follow the practice, if it seems as though there is a problem and there needs to be a resolution, then perhaps we could bring that back.

These places, as I increasingly learn, do exist on tradition and practice, and perhaps there are some times when, in terms of what Mr. Swart says, the chairman would need to see a quorum that might not necessarily literally follow the rules. I would be interested in what some of the other members who have been here for a time would feel about that, because we may be entering on to ground that we do not fully comprehend, or that I do not comprehend.

Mr. Chairman: You may prefer to table the motion.

Mr. McCague: Good idea, Mr. Chairman.

Mr. Beer: OK. The motion is withdrawn.

Mr. Chairman: The motion is tabled.

Mr. Beer: Tabled.

1020

Mr. Chairman: The other aspect I indicated I would report back on was with respect to the procedure I would use for having sections of the bill adopted. The discussions I had would suggest that the procedure I used last time was not incorrect. It is just not the usual procedure, the suggestion being that I should encourage--I think that was the word that came up the most often--that we not have motions dealing with the whole bill; rather, that we deal with it section by section. I am not sure it is as efficient, but none the less, that is the practice. I would be inclined to go that way.

Should there be a motion brought forward on the whole bill when somebody else still wants an amendment, I understand it is considered appropriate that the first resolution be defeated on moving the whole bill and then dealing with possible amendments, and then bringing up the issue of the whole bill all over again. That runs a little counter to my intuitive sense of how it should proceed, but none the less, that has been the practice.

Are there any questions about any aspect of that? There being none that I can see, I would like to call the first matter on the agenda, which is Bill Prl4. Mr. Cousens is the sponsor. Mr. Cousens, perhaps you could come forward with the applicants and introduce yourselves and them.

#### YORK FIRE & CASUALTY INSURANCE COMPANY OF CANADA ACT

Consideration of Bill Prl4, An Act respecting York Fire & Casualty Insurance Company.

Mr. Cousens: I am very pleased to be here with the president of York Fire & Casualty Insurance Co., and with Murray Thompson, solicitor for York Fire & Casualty Insurance Co., of Blaney, McMurtry and Stapelle. I am very pleased to support the bill before us, Bill Prl4, which is one that will give this very distinguished insurance company the opportunity to do business outside of Ontario in the rest of the country. It is a bill that has been a standard procedure in the past and, hopefully, with the good spirit that has been shown already by the committee, you will be able to see that there is nothing tricky or momentous going on here, except for this company.

Mr. Chairman: Proceed.

Mr. Cousens: The bill is there before you. I would ask if you have any questions, certainly either Mr. Thompson or Mr. Thain will be pleased to answer them.

Mr. Chairman: I guess before we go to members of the committee, it would be appropriate for Mr. Neumann, who is the government representative, to make a comment, or Mr. Haggerty.

Mr. Neumann: I believe Mr. Haggerty has a comment.

Mr. Haggerty: I have some additional background for the committee members to consider. The York Fire & Casualty Insurance Co. is a corporation incorporated under the Corporations Act and licensed as an insurer under the Insurance Act.



The corporation is applying for special legislation to continue under the federal jurisdiction. The Corporations Act, subsection 313(3), only permits corporations to continue to jurisdictions which permit corporations under its legislation to continue under the laws of Ontario. The Canada Corporations Act does not have such a provision. Therefore, the corporation cannot avail itself of section 313 and requires special legislation. The companies branch has no objections to the continuance of this corporation to the federal jurisdiction. Legislative counsel has advised that the Ministry of Financial Institutions, which licenses insurance companies in Ontario, also has no objections. At least two other insurance companies have continued in this manner.

If there are any further questions dealing with section 313 of the federal legislation, then I have Katherine Levine here.

Miss Levine: It is a provincial statute.

Mr. Haggerty: Provincial, is it? There is a correction then. The solicitor for the companies branch will answer any questions in that area.

Mr. Campbell: The question I would like to ask is, how long has this company been waiting for this approval through this process? How long have you been waiting to get to this process?

Mr. Thompson: I have in my files December 1986. It is about one year, I believe.

Mr. Beer: Mr. Chairman, I am going to move an amendment, which I understand has been agreed to by the representatives of the company.

Mr. Chairman: Mr. Beer moves that section 1 of the bill be amended by inserting after "Canada" in the third line "or the Minister of Finance, as applicable."

Mr. Beer: I guess everyone has a copy in front.

Mr. Chairman: If I might just inquire, is that acceptable to the applicants?

Mr. Thompson: Yes, it is.

Mr. Chairman: I take it the minister has no further comment.

Mr. D. W. Smith: Just a question of the company people. Do you feel you have to do this in order to compete in the insurance industry? Is this why you do these things? I see other companies have done it in the past, and some of them are fairly large. Is this the reason that companies have to change and move out of Ontario ?

Mr. Thompson: I think the primary reason is that, if you are going to operate nationally, which Mr. Thain can describe, legally you cannot operate in Nova Scotia as an Ontario provincial company, as well as in Newfoundland. They only permit federally licensed insurance companies to operate there. To make it national, you must go that way.

Mr. D. W. Smith: Fine. Thank you.

Mr. Swart: I have two questions. First, I am a little confused as I am not familiar with procedures, but I understood the member for Niagara South (Mr. Haggerty) to have said something about continuing the operation. Am I wrong in that interpretation? I was wondering if there had been operation up until this time outside of Ontario, or is this just the first application to operate the company outside of Ontario? That is my first question. I am a little confused on that. Am I quoting you incorrectly? Did you use the word "continuing"?

Mr. Haggerty: It permits the corporation to continue in jurisdictions which permit corporations under the legislation and to continue under the laws of Ontario. Do you want a further explanation than that then, Mr. Swart?

Mr. Swart: Yes, I would like a little further explanation on this.

Mr. Haggerty: We have some legal advice.

Miss Levine: Currently, the corporation is an Ontario corporation and it is continuing to the federal jurisdiction and under federal corporate law. That is the purpose of this special legislation.

Mr. Swart: The word "continue" is used in a little different context.

Miss Levine: That is right. It is in the legal context.

Mr. Swart: Yes. The second question, and I am sure there is a logical answer to this, is on section 3, which says, "The Minister of Consumer and Commercial Relations may, on receipt of notice and certified copy of the letters patent referred to in section 2...." I realize that insurance comes under the Ministry of Financial Institutions, but I suppose this is the incorporation. Is that the answer here?

Mr. Thompson: That is correct.

Mr. Swart: Is that why it refers to Consumer and Commercial Relations?

Mr. Thompson: Yes, to the companies branch where the corporate records of the company are kept.

Mr. Swart: Incidentally, if I may, Mr. Chairman, I would just like to welcome Mr. Thompson back. He and I sat in this room on a number of occasions before in different contexts.

Mr. Thompson: Yes.

Mr. Swart: Sometimes in considerable conflict and sometimes on the same side.

Mr. Chairman: Any further questions from the committee? I am hoping then to proceed to deal with the sections commencing with the amendment to section 1.

Section 1, as amended, agreed to.

Sections 2 to 5, inclusive, agreed to.



Title agreed to.

Preamble agreed to.

Bill, as amended, ordered to be reported.

Mr. Cousens: Thank you very much. I appreciate the support of the committee.

Mr. Chairman: Sufficiently expeditious, was it?

Mr. Cousens: Thank you.

Mr. Swart: I want you to note that I am on record as supporting an insurance company.

Mr. Chairman: Wonders will never cease.

1030

#### CONRAD GREBEL COLLEGE ACT

Consideration of Bill Pr71, An Act respecting Conrad Grebel College.

Mr. Chairman: The next item on the agenda is Bill Pr71. Mr. Epp is the sponsor. Perhaps he could come forward with the applicants and introduce them.

Mr. Epp: Mel, is that because you want to nationalize it tomorrow?

Mr. Chairman: Please proceed.

Mr. Epp: Mr. Chairman and members of the committee, I am pleased that you are going to be able to clear this submission today and deal with this matter with regard to Conrad Grebel College in Waterloo.

I have with me this morning Rodney Sawatsky, who is the vice-president, academic, of Conrad Grebel College, and Reg Haney, who is the solicitor for the college.

This college was incorporated by letters patent in 1961 with one of Canada's and the world's great educational institution, the University of Waterloo. Since that time it has been obviously closely associated with the University of Waterloo. What they are seeking today is a separate bill, of course, as you are keenly aware. Second, the college would like to be in a position to offer degrees in theology, a status which it presently does not hold. I ask for the approval of this bill. Mr. Sawatsky and Mr. Haney would be more than pleased to answer any questions that you may have.

Mr. Chairman: Do the applicants have any other comments they wish to make?

Mr. Haney: If I may comment, Conrad Grebel does have an affiliation federation agreement with the University of Waterloo at the present time. It has been operating in that arrangement since it was first created by letters patent.

We do have the support of the University of Waterloo for what we are now asking of this Legislature. On that campus it is not a contentious issue at all. We are going forward with their blessings.

Mr. Neumann: I am pleased to report that the Ministry of Colleges and Universities is in support of the bill. There were some initial problems which have been sorted out. So that the committee is aware, I will quote from a memorandum from the deputy minister to the minister.

"Most universities and most federated and affiliated institutions in Ontario are organized by special acts of the Legislature. St. Jerome's College, a federated college of the University of Waterloo, has its own act. In fact, its act was recently revised. Conrad Grebel is one of the few affiliated colleges in Ontario that does not have an act of its own.

"In October 1986, the college submitted a private bill to the legislative counsel requesting its own act. The bill was subsequently referred to the ministry for comment. Representatives from the legislative counsel, the University of Waterloo and the ministry have reviewed the bill.

"The major area of contention originated with the fact that the college proposed to offer degrees of a secular nature. Specifically, the college proposed to include the master of peace studies degree in the powers of the college.

"Under the Degree Granting Act 1983, no university has the authority to grant degrees unless it has been empowered to do so by the Legislative Assembly. Furthermore, there has been a long-standing provincial policy that no new free-standing, secular degree-granting institutions be established. Instead, we have encouraged new institutions to affiliate with provincially assisted institutions. Because of this policy, the ministry has not approved granting secular degree-granting powers to affiliated colleges or bible colleges, unless the college was previously empowered to do so by the Legislative Assembly.

"The college has agreed to delete the degree from its powers. All areas of contention have now been resolved, and it is the recommendation of the government that this bill be supported."

Mr. Chairman: Thank you very much, Mr. Neumann. Are there any questions or comments?

Mr. Swart: I believe there are other colleges on the Waterloo campus that also have that same privilege, are there not, at the same time?

Mr. Haney: If I may respond to that, the other affiliated colleges are St. Jerome's, which is the University of St. Jerome's College; St. Paul's College, a United Church college; Renison College, an Anglican Church college; and Conrad Grebel.

Mr. Swart: I support this change. It seems reasonable. I would ask this question, although it is not pertinent to this bill, but I am sure these people would want to know.

Because a private member's bill is dealt with rather quickly in the House, is it the intention that the private members's bills that we were dealing with last week and this week will be introduced in the House and dealt with prior to the Christmas recess?



Mr. Chairman: I can give you a definitive of I do not know, although I suspect not. Are you asking whether it will be through the whole system?

Mr. Swart: That is right.

Mr. Chairman: It will get reported back. I do not know, frankly.

Mr. Swart: It seems to me that we should make some effort because I know, again in past practice, they can normally get through these kinds of bills in half an hour.

Mr. Haggerty: You might like to hear too from the companies branch of the Ministry of Consumer and Commercial Relations this additional background for the committee to consider in relation to Bill Pr71.

"Conrad Grebel College is a post-secondary institution incorporated under the Corporations Act. It is applying for reincorporation as a special act corporation with the power to grant degrees in the field of theology. As a special act corporation, its corporate structure is set out in the special legislation, and the provisions of the Corporations Act only apply if they do not conflict with the special legislation."

I believe all degree-granting academic institutions in Ontario must now be governed by special legislation under the companies branch. The ministry has no objection to this bill.

Mr. Epp: I was just going to say I hope we could let the Legislature deal with this matter before it recesses at Christmas on December 17. It is my expectation that it will.

The Chairman: The clerk advises me that the pattern is that it takes a collection of them and deals with them as a group. Her expectation is that it will deal with them some time next week. I made my comment because I knew that when I reported things in last week, nothing else seemed to happen. I was sort of apprehensive as to how fast anything would move through the House, given the other things I have observed there. However, if we can get it through, I would think that everybody would like to do that.

Mr. Swart: If I could just say one other word on that, I would suggest that perhaps after today's session, with everything we have done so far, you could perhaps take it up with the appropriate officials to see what that leads to this week. I understand that next week we probably cannot do it, but I think that we should try to do it for last week and this week.

Mr. Chairman: I will undertake to take that up with the House leader.

Mr. Haney: There is one further comment I have, if I may. We were informed prior to this hearing starting that there is one minor amendment. As a matter of record, I think you have it in front of you.

Dr. Sawatsky and I have no objection to that. Indeed, I think it is an improvement in the drafting, and we will go on record as agreeing with that change.

Mr. Chairman: There is a motion which in draft form has been circulated. I think everybody on the committee has that. I will deal with that when we get to it in order, if that is agreeable.

Are there any other comments or questions from members of the committee?

Mr. D. W. Smith: It looks as if you are going to have no problems in getting this bill through. Will this create any more students by being granted these powers?

Dr. Sawatsky: Yes, more students but I do not think many more. We are not thinking of large numbers. We are thinking of possibly something like 25 students annually. Many of these are part-time students. The program is to create the situation where people in their careers can do this on the side. In terms of numbers, there will be definitely not more than 25 full-time annually. We could not handle any more than that.

Sections 1 to 3, inclusive, agreed to.

1040

Mr. Chairman: Mr. Beer moves that clause 4(c) of the bill be amended by striking out "or to be into affiliation or federation within" in the first and second lines.

Motion agreed to.

Section 4, as amended, agreed to.

Sections 5 to 13, inclusive, agreed to.

Preamble agreed to.

Title agreed to.

Fee-waiving motion agreed to.

Bill, as amended, ordered to be reported.

Mr. Epp: Thank you, Mr. Chairman, and members of the committee.

Mr. Chairman: You are quite welcome.

# OTTAWA CIVIL SERVICE RECREATIONAL ASSOCIATION ACT

Consideration of Bill Pr4, An Act respecting The Ottawa Civil Service Recreational Association.

Mr. Chairman: The next item on the agenda is Pr4. Mr. Chiarelli is the sponsor. Perhaps he can come forward with his applicants. I understand that we get the slide show this time.

Mr. Chiarelli: Mr. Chairman and committee members, I am very honoured to sponsor this act today on behalf of the Ottawa Civil Service Recreational Association. I am also very pleased to support the act. I would strongly urge that the committee members do so as well.

The Ottawa Civil Service Recreational Association has existed as a nonprofit corporation since the 1940s. I have here with me today a solicitor acting on behalf of the association, Terrence Denison, and the general manager of the association, Gratton Sheely. I also understand that Mr. McGuinty, the



member for Ottawa South, the riding in which this particular facility is located, will be speaking in favour of it, as will Mr. Sterling, the member for Carleton.

By way of background, very briefly, this bill is essentially an amendment to an existing bill. I think it is very important to keep that distinction in mind. Mr. Neumann, on behalf of the ministry, will be talking about certain criteria of the ministry which have in recent years been established. I believe this association and this bill should be treated as a type of grandfather situation because, basically, what we have here is an association serving over 40,000 people for recreational activities and social activities in the Ottawa area, predominantly employees of the federal government.

In 1961, an existing act was passed by the provincial Legislature exempting by metes and bounds description this facility from municipal taxes. Basically, at that time, in 1961, the Legislature thought it prudent and wise to give the exemption. The practice was then, as it still is now, to do a metes and bounds description of the actual building and the facility being exempted. In 1961, the facility was defined and was exempted from taxes. Since then, there have been a number of physical additions to the facility. They have built on to the existing building. Because the additional buildings were not defined in the original act, it did not receive real estate tax exemption.

What we are doing here today is trying to catch up, in a sense, and follow the same rules that existed in 1961, that is, exempt the physical facility for this particular association. I would ask the members to please keep in mind that, in effect, we are amending an existing law even though it is taking the form of a new act. We should look at it from the point of view of a grandfather situation. We are not extending offsite. We are not a new association coming in looking for a new exemption. I think it is a very fair request on the part of the Ottawa Civil Service Recreational Association and I would strongly urge the members to consider passing this bill. I would like now to introduce Mr. Denison.

Mr. Denison: To follow on what Mr. Chiarelli has said, I should advise the committee that the exemption as it is actually applied is really a partial exemption. It is only an exemption for those parts of the facility that are used for recreational and cultural programs. We are going to show you a slide presentation so you can understand the kinds of facilities and programs that are involved here. The facilities and programs that are provided are very similar to programs and facilities that are provided in other municipalities by the municipalities themselves.

In fact, the municipality does participate and co-operate with the RA centre and programs by sharing staffing, facilities and programming on this site. The RA is also a partner with the city for programming off the site as well. I am anticipating some comments that Mr. Neumann will make on behalf of the government with the criteria that have been set out, because I have a letter that was addressed to me by the former minister, Mr. Grandmaitre, when it was in his portfolio.

I do not disagree with the criteria and the objectives of the criteria that have been set out by the government, but what I hope to explain to the committee to elicit your support is why this is a special case worthy of special legislation and how some of the points which will be brought out by Mr. Neumann perhaps do not apply in this particular case.

If I can just anticipate, initially, what those might be--and with perhaps the chance to readdress them, if I have missed something that is going to be presented--the land that this building is on sits on land that is owned by the crown in right of Canada and is leased to the Ottawa Civil Service Recreational Association by a long-term lease, which started about 1959 and runs until the year 2054. The buildings that are on the lands will revert to the crown at the end of that lease or should the corporation be dissolved prior to that lease.

I have also looked at the letters patent and the constitution of the corporation and I am satisfied that the assets of this nonshare corporation, upon dissolution of the corporation, would end up going to the crown either in right of Ontario or Canada. I am not sure, but certainly they would revert to the public, should the corporation ever cease to exist. As you know, if the land is owned and used by the crown, the local municipality is given a grant in lieu of taxes. That would be the case for this property, were it not used by this organization.

From my recollection as an alderman for the city of Ottawa, grants in lieu of taxes went mainly to the city and were not shared in by the regional government or by the school boards. In fact, having the RA operate this is a bit of a windfall in a sense for the school boards in the region, because they are able to then share in such taxes as are levied on the property. There will continue to be taxes levied on this property and paid to the municipal and other bodies.

The exemption really is structured in a way that permits the city of Ottawa to pass a bylaw from year to year, by consultation with the regional assessment office for Ottawa-Carleton, where they can actually define the cultural and recreational facilities that are properly to be exempted and without the need of coming back to this committee and your Legislature every time there is change, which may be an increase, or possibly could be a decrease, in the exemption.

Just before I show you the slide presentation, I emphasize that the purpose of the slide presentation is to show you the kinds of facilities and activities that are carried on and to emphasize to you that this is a very large participation of people in this organization. The compendium suggests that the membership is 30,000. In fact, when you take into account family memberships and the like, the participation is something like 45,000 persons, primarily in Ottawa but also in the adjoining municipalities.

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I would also like to leave with the chairman a letter of support from Mayor James Durrell, the mayor of Ottawa, which I will give to the clerk for distribution to you, and a letter of support from Joan O'Neill, who is the local alderman for the area that includes the RA centre. I also have for your record a letter addressed to me from the city clerk, J. R. Cyr, of the city of Ottawa confirming that there is a resolution of the council of the city of Ottawa, together with certified copies of the council's report supporting this bill.

In passing those along to you, I should tell you as well that the council of the city of Ottawa endorsed this bill unanimously and that the members of council of the city of Ottawa make up 50 per cent of the council of regional government in Ottawa-Carleton. Without being too presumptuous, I think there is at least one other member of that council who would endorse and



support this bill, and I dare say that, because of the participation of residents in Ottawa-Carleton, it would be likely to be unanimously supported by regional council as well.

Perhaps we could start the slide presentation.

[Slide presentation]

11:01

Mr. Chairman: There was a question as we got to the last or second-last slide. It was whether the buildings showed which ones were being added on. It went quite quickly. It was hard to be sure.

Mr. Sheely: The building grew from west to east, so the parts on the left-hand side are the ones that are most recent.

Mr. Chairman: What I am trying to get is, did the second-last slide show the location of all the buildings?

Mr. Sheely: That is correct, yes.

Mr. Chairman: Perhaps we could put that up again just for a moment. Is that feasible?

Mr. Denison: The buildings are all joined together, but you might have seen the government buildings adjacent to it in one of the slides.

Interjection: Possibly.

Mr. Chairman: I thought for sure the request for your photo was going to be a different one, but I can settle for the buildings. Can we put the lights down a little?

Mr. Sheely: Do you see the pool? The most recent addition starts to the left of the pool. Sorry, that is the curling rink. That was part of the original building.

If you keep going, Terry, to the end of that group, starting there is the most recent major addition, about 10 years ago. However, you will see a section on the west end. That section was created as a seniors' room and, in fact, was put there in 1984. That would have been the most recent expansion.

Mr. Chairman: Okay, but it is the section that is west of the curling rink that affects essentially the application today.

Mr. Seeley: It also includes that section including the senior's room.

Mr. Denison: Actually, I think the 1961 building would have been this portion here, and it has grown westward from there. There have been several additions.

Mr. Chairman: That is quite a bit of help.

Mr. Denison: Just while that slide is going off, I should point out that while this organization is very much like an employees' recreational co-operative kind of venture, and certainly the fees are set at cost or any

profits that are earned are put back into the facilities, it is open to any member of the public to come and take part in the facilities.

I would also like to point out that there are a couple of things you saw in the slides, such as the sports shop or the travel agency, and there are other things, which are operations of a commercial nature, and they will not be exempted under the arrangement between the city treasurer and the regional assessment offices. It is only those activities of a cultural or recreational nature that will be.

Mr. McGuinty: If I may comment briefly, my colleague the member for Ottawa West (Mr. Chiarelli), in his comments a moment ago, said this facility is located in my riding. That is true, but that consideration is rather incidental, because I think the services rendered by this facility transcend any one particular riding or area of the city.

I have not dealt formally with this in my capacity as chairman of the Ottawa-Carleton caucus, but I can assure the members of the committee that the consensus view of that caucus is very favourable to the request we are presenting today.

The civil service recreation facility has over 45,000 members, about 4,500 of whom are not civil servants. It is a nonprofit organization, as you know. It provides services to the municipality which the municipality otherwise would be compelled to provide. Perhaps a strong case could even be made that any taxes that would be foregone were the exemption extended would be exceeded--I think considerably--by additional costs that the municipalities would have to incur were they to provide these services themselves.

The facility provides a kind of ancillary service, likewise, for the education systems in the city of Ottawa. In my own 15 years as a trustee on the major board, the Ottawa Board of Education, I became very familiar with them. Our teachers, our staff, our students and I have always been particularly impressed by the wonderful summer programs that the facility provides for children--day camp facilities--in an area of very, very high density, in an area with a significant number of poor families, and it renders a tremendously valuable service in this regard.

I have spoken with municipal officials as recently as last Friday and, as Mr. Denison has said, they strongly support this request. I understand that there were notices printed in the local press stating the intent to ask for extension of this exemption. The OBE did not respond. On the basis of my experience with that board, I would interpret that as tacit assent and approval on their part.

I know that we are all sensitive, and I think properly so, to further erosions of any municipal tax base, but I think what we have here is really a request for the logical extension of the application of a principle which was accepted very appropriately in 1961. So I would enjoin the members of the committee to take to heart very seriously the very legitimate request we have on the part of the whole national capital community for the continued wellbeing of a facility which really adds a great deal to the quality of life of people.

Mr. Sterling: I would like to add my support to the Ottawa caucus as well. I am not normally part of it, but I will join in. When we get together for events like this, they are not a bad bunch of fellows.



I think there are three points to be made. I think Dalton has probably made them, so I will not belabour them.

First of all, legislation like this is permissive only, and therefore the city of Ottawa still has the negotiating power in dealing with the recreational association co-op as to how much it wants to let them off the hook for municipal taxes. Therefore, if any function changes within that particular recreational facility, the city can decide in that particular year that it is not going to give them an exemption; so it is permissive only.

Legislation in Ontario does not allow municipalities to allow a structure like this to have a holiday in terms of property tax, and so they have to come here and plead their case in front of the committee. I think as politicians we can make the decision as to whether this is a worthwhile group in order to do that.

I think the other point that should be made is that if these recreation facilities were not provided by this particular institution, the city of Ottawa would be on the hook for a lot more not only in terms of capital but also in terms of taxpayers' moneys to run a similar kind of facility, which would have to be located in some other place in Ottawa.

The third point is the grandfather section. We have an anomaly in the legislation as it now stands. We have an old piece of legislation, the 1961 permissive bill, and we really should do something with regard to an archaic piece of legislation which is no longer really applicable to the existing situation.

I just think we should use our discretion in this case to allow the city to forgo property taxes in this particular institution because it is and has been supported by so many people in Ottawa and the region.

Mr. Chairman: Thank you. Mr. Campbell and then Mr. Cooke.

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Mr. Campbell: First of all, either through--

Mr. Chairman: Pardon me. My apologies, Mr. Neumann. I should have asked for comment from the government. I took it for granted we all had this memo and we had a sense of what the position of the government was.

Mr. Neumann: Mr. Chairman, thank you for the opportunity to present the government's attitude with respect to the application from the Ottawa Civil Service Recreational Association, as presented to us by Mr. Chiarelli.

I would like to ask the committee to go back to basic principles in reviewing this. As was mentioned, a letter was sent from the previous Minister of Municipal Affairs outlining basic principles at stake. To review those for the record:

1. The organization should be a registered charitable organization under the Income Tax Act.

2. The organization should own and occupy the property.

3. The municipal council in which the property is situate should approve the bill.

4. The exemption should be granted through a municipal bylaw as opposed to being exempted directly by the bill.

5. If the bill provides for exemption for upper tier and school board purposes, then they must approve of the exemption or the lower tier may, in effect, pay for the exemption.

6. The exemption should apply to property taxes only and not to other charges, such as local improvement rates.

When we measure this application against the six criteria, we find that one of the most basic criteria, namely the charitable status, is not met. First, I would like to commend the people in Ottawa and this association for a very fine facility. It obviously offers great programs but it is not an organization which has charitable status. There may be other similar organizations elsewhere in the province that offer recreational and cultural programs of a similar nature. They do not have tax-exempt status.

The government is recommending that the committee not support this amendment to extend the current exemption. We are not recommending that the entire bill, the original act be rescinded, which, in effect, means that we are recognizing the grandfathering. The grandfathering was the original bill. What is being asked for here is an extension, let us be clear about that.

Second, the government recommendation should in no way impair the city of Ottawa's ability to support this very fine institution. If, indeed, it is the judgement of the city of Ottawa that this institution provides a service which it would otherwise have to provide through municipal programs, it could recognize that through an annual grant. It has that ability under the Municipal Act to provide an annual grant.

I think what the committee should understand, and one of the basic, principal concerns of generally granting tax exemptions to any organization, is that when you do that, you are providing an annual grant to that organization which the rest of the taxpayers in the community have to pick up. The only difference is that it is on an ongoing basis and, therefore, does not become an annual part of the budgeting process to be measured against other priorities of the municipality. In effect, you are indirectly providing a grant.

I believe there are three ministries that have concerns with respect to this application.

The Ministry of Education has the same objection I indicated to you last week, that it does not support any exemption for taxation for educational purposes. That is an ongoing, outstanding objection that it has put forth. In the past, the committee has chosen to ignore the Ministry of Education concerns, as it did last week with the other application.

The Ministry of Revenue has indicated a concern as well. However, it recognizes the exemption that was granted in 1961 prior to many of these criteria being put into place, but it is quite concerned about the extension to the expanded area.

With respect to Municipal Affairs, our concern is that the criteria have not been met, and I guess the most important criterion here is the one of charitable status. You may be setting a precedent for quite a few other agencies that might come before the Legislature and ask for such tax



exemptions. The more tax exemptions you grant, the more you are watering down what is, in effect, the only source of municipal revenue other than municipal transfer payments. That is the assessment base of the municipalities.

The basic principle we see is that there should be clear support from the upper-tier government, namely, the regional municipality of Ottawa-Carleton and the school boards. Otherwise, the lower-tier municipality is, in effect, passing a bylaw which removes a revenue source or revenue base of the upper-tier municipality without its consent. Those are duly elected local governments and it is on this basis that Municipal Affairs and the government as a whole are expressing their concern.

As I say, denying this particular application should in no way impair the operation of this facility. It does not preclude the government of Ottawa from making an annual grant. It does not preclude the school boards and the upper-tier government, if it feels this is a very worthy organization that provides a service which might otherwise have to be provided through municipal programming, from making an annual grant which then would be part of the annual budgeting process of the municipalities concerned.

Mr. Denison: I wonder if I could comment briefly on this position. The nonprofit status and whether there is registration under the Income Tax Act of Canada are points of concern raised by the government. Generally, the organizations that obtain a charitable tax registration under the Income Tax Act are those that are doing fund-raising and issuing receipts for donations, those organizations which primarily are involved with the relief of poverty and other special purposes. Sports and recreation are not matters for which a tax registration is done. YMCA organizations, and so on, often have a registration under that type of legislation; however, it relates primarily to the work they do with hostels and relief of poverty.

I would just point out that the comments made on behalf of the government are not matters of legislation, but they are matters of policy and they have a good basis. Generally speaking, I think they are to be commended and supported. However, this committee has discretion, when it feels that there is an appropriate case made out that there should be an exception to that policy, and we are not asking the government or you to be inconsistent. We are hoping we have made out a case that you will find is a special case worthy of that kind of support from you.

Mr. Chiarelli: I have one very brief point. I think we should define what precedent we are setting here, if in fact we are setting a precedent. I do not think we are setting the precedent that Mr. Neumann is claiming we might be setting. We are setting a precedent that if there is an existing private member's bill that gives this type of exemption, and a particular facility builds an addition, that type of association in that type of circumstance should be entitled to the same exemption.

In effect, it is the extension of a nonconforming use or nonconforming exemption, a principle which is well known in municipal law in other areas, and this is a precedent that I urge the members to accept and make because I think it would be a good principle to follow. The rules have been changed in the middle of the game for some of these organizations, as in this case, and I think it makes sense to extend it.

Mr. Neumann: There is one other point that we would like to make from the government perspective. I call upon John Chipman, general counsel for Municipal Affairs in the legal branch, to comment on the apportionment formula, grant in lieu that you heard about with respect to crown land.

I also want him to comment on the commercial uses, which you saw in the very fine slide show, because there is perhaps a concern. I mentioned the benefit to the municipality in terms of providing programming the municipality might otherwise have to provide. But we have to be careful that commercial uses which could, in effect, be in competition with private sector businesses, such as travel agencies and the other commercial uses, catering services and so on, not be subsidized through tax exemptions.

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Mr. Sterling: Pardon me, it was made clear in the presentation that commercial uses were not exempt.

Mr. Neumann: Yes, I heard that. However, how that is done is perhaps what we would like to comment on. I would like to ask Mr. Chipman.

Mr. Chipman: In our view, there is a difference, and we think a significant difference, between the 1961 legislation and what the applicant is currently seeking. In 1961, the legislation spelled out quite specifically those portions of the property for which the exemption was to be granted. It was a description of the property as a whole and then a further schedule attached to the act which set out the specific elements within that property that were exempted. Those were basically such things as darkrooms, gymnasias, facilities used for sports purposes.

Under the legislation currently being sought, the exemption could be granted for any facilities occupied and used solely for the purposes of the association. As the slide show has made clear, the purposes of the association include a number of commercial purposes, such as the travel facility, the sports shop and the restaurant. There is nothing in the legislation put before you today that would prevent the city of Ottawa from granting exemption from taxation to all the facilities that are used solely for the purposes of the association. There is, therefore, nothing preventing the city from granting the exemption to the commercial portions of this operation. In our view, that would create a precedent.

Mr. Chairman: We can ask the applicants whether the schedule that is set out here includes all the land, or is it simply the land where the buildings exist?

Mr. Denison: I am sorry. I did not hear the last part of your question.

Mr. Chairman: Does the schedule set out on Bill Pr4 include all the land that is leased by the association, or is it merely the portion that is occupied by the buildings?

Mr. Denison: That is all the land that is leased by the federal crown to the association.

Mr. Chairman: I have been denying members of the committee an opportunity to ask questions. I would like them to do that now.

Mr. Campbell: I have a number of questions. In fact, this is a learning experience for me, because I have one of these bills coming forward rather soon and I might as well clean up those questions now and save the committee's time in the future. Sometimes these things happen: when you sub for other people, it works out.



First of all, what is the tax assessment we are talking about in this case for this extension?

Mr. Denison: The 1980 market value assessment for this property is \$2,733,000 for the land and \$6,709,000 for the building, for a total 1980 market value assessment of \$9,442,000.

Mr. Campbell: Is that the total building or the exemption that you are asking for?

Mr. Denison: No, that is the total building and land that is assessed now.

Mr. Campbell: OK, what proportion of that would be--

Mr. Denison: There is a letter filed by the assessment region number three office of the province addressed to the city of Ottawa and signed by an evaluation manager for that office. Upon review of the actual facilities and buildings that were there with the applicant and with the city treasurer, they found that the assessment exemption would be equivalent to 50 per cent of the assessed value, so there will be taxes levied on the balance of that.

Just to follow up, I should explain that part of the problem is that we have a large land area--we have playing fields and so on that are included in the exemption--and that is how they arrived at that, on the basis of land area.

Mr. Campbell: I have a difficulty with your contention. I guess it was Mr. McGuinty who made the presentation at the point when I was asking questions. I am not too sure that it matters whether or not you have a facility that caters to 45,000 people, according to your figures, whether or not a travel agency or a business of that size is, in fact, competing. When you have traffic, you might as well say there is--if an equivalent business was in a mall, that is the kind of traffic you would be generating and, therefore, you have kind of a captive audience. I am a little concerned that you say you are not competing when you may be competing, because you have the captive traffic that the mall might have. That is my point.

I was concerned, though, that Mr. McGuinty seemed to indicate that this facility might go out of business without the tax-exempt status. I would like one of you to clarify whether that is the case or whether you might have difficulty servicing your public without the tax-exempt status on the whole property. I can see the \$9 million, for example, and that is why I asked the question.

Mr. Denison: Yes. I think it is not so much that they would go out of business at this point. It is a viable organization but it does operate on a break-even basis from year to year and there is a very marginal difference from year to year whether there is a deficit or a surplus. If there is a surplus, it is ploughed back into the organization; if there is a deficit, it has to be carried up and made from levies against the membership rates. It is viable now and it is not going to fail, but it is faced with older buildings which do require some significant updating. Any savings that were made as a result of this exemption would be ploughed into those kinds of updates in the buildings and the increased maintenance of them.

Mr. Campbell: What dollar value are you speaking of?

Mr. Chiarelli: Mr. Sheely, perhaps you could comment on the nature

of the older buildings and the nature of the work that is necessary to renovate and the fact that perhaps there is no other source for renovation funds.

Mr. Sheely: Basically, most revenue that is generated annually is used to pay for the operations of the organization. The old part of the building that you saw in the west end is approximately 30 years old. I do not know if you noticed in particular the shot where there were pictures being taken right at the end. Actually, it was a couple getting married in the facility.

That part of the building is quite old. We need to spend about \$70,000 just installing an improved alarm system, and there are no sprinklers. The aesthetics of the old part of the building are quite worn out. We are going to have to spend many hundreds of thousands of dollars to bring that old structure up to modern-day standards. Certainly, this amount of money annually would contribute significantly to being able to pay off the debt that we will have to incur to do that.

Mr. Campbell: All right, but I take issue with the assumption that, if someone does not reply to an advertisement, there is tacit approval. I do not know if you do that in Ottawa, but we certainly would not do that in Sudbury. We would phone up and say, "Where is your letter?" I am concerned that tacit support by nonintervention is a difficult principle for me to accept in that case. We will probably spend a little time trying to achieve those letters, and if not, why not? You may do things differently in Ottawa and I may not appreciate those differences but I think it would strengthen your case.

Mr. Denison: I suppose there are a couple of reasons for that. One of them simply is that when you have the unanimous support of the city of Ottawa council, constituting half of the regional council, it is not anticipated that support from the region will be a problem.

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I know I have had discussions with some of the area mayors about the exemption, and it was not raised as an issue with the area mayors from Nepean, Gloucester, Osgoode and others we spoke to. As recently as Friday, I spoke with the regional treasurer about the thing. From the treasurer's point of view, anything that reduces any revenues he can get is not something he would endorse; but, on the other hand, it was not something that the regional treasurer felt strongly enough about to raise it with his council.

With respect to the school boards, I guess probably it was a timing thing, with not knowing when the bill was coming forward. In fact, we are here today, I guess, a little bit sooner than we had anticipated. The bill had been put on hold and then came back on very quickly. I do not know if that answers your question.

Mr. Chairman: If I could just interrupt for a moment, Mr. Neumann has another point he wants to make. He is going to be called away momentarily, so if I could let him put that on the record, it may free him up a bit.

Mr. Neumann: There was a question about the assessment, and I have the information on the taxes that this association paid in 1986--we do not have the 1987 taxes--which totalled \$362,299. The breakdown was \$76,782 to the lower tier, and to the upper-tier governments you had \$106,419 to the regional municipality of Ottawa-Carleton and \$179,098 to the school board.



I think what you have to keep in mind on this, even taking into consideration that there could possibly be an arrangement to exclude the commercial operations within this centre, is that, in effect, the three levels of government, the three distinct governments, would be giving an annual grant of \$362,000. One has to ask the question, should that not be held up for comparison against other grants? Every municipality has a granting procedure to many worthy organizations in a community: a house for battered women, for example, and other worthy organizations in the community.

What you are doing when you give a tax exemption is that you are making an automatic annual grant that does not come up against the usual budget scrutiny in comparison with other organizations that are also seeking grants. I think that is a point that has to be considered when the exemption is for an organization that does not have a charitable status.

Did you have anything to add, Mr. Chipman?

Mr. Denison: Mr. Neumann, I would like you to hear the comment I have about that information.

Mr. Swart: I wondered if before that, Mr. Chairman, we could get some more factual information on this from Mr. Neumann before he goes, because we have not found it out yet.

Mr. Neumann: OK, I will stay, Mr. Swart.

Mr. Chairman: If we are going to have stuff coming on here, let us try to get it through the chair.

Mr. Swart: I thought if Mr. Neumann is leaving, I wanted to get this information from him, because he did give us information on taxes paid.

The question I want to ask and get an answer to is, what proportion of those taxes--I will put it another way: They are evidently paying the \$362,000 on the portion that is not exempt.

Mr. Neumann: Yes.

Mr. Swart: What is the proportion of the exemption versus what they are paying taxes on now? In other words, how much are they being exempted? I do not care whether it is assessment, the relationship between the proportion on which they are paying taxes and the proportion on which taxes are not being paid. Do I make myself clear? It seems to me that is important to know.

Mr. Neumann: The information I have here, in answer to that, is that approximately 52 per cent of the existing facilities are exempt; so if the assessment is proportional to that ratio, then they are already receiving an exemption of about \$360,000.

Mr. Denison: No, that is incorrect. I have a letter from the regional assessment officer. At this point the exemption is about 9.9 per cent, based on the 1961 act.

Mr. Swart: If I can just again pursue this a little further, I realize that part of these facilities is not exempt because they are commercial facilities, although this bill would exempt them. What I want to know is, on the proportion of the assessment of the section which is now exempt, how does that relate to the total assessment of the whole facility? We

can get that on assessment or we can get that on taxes, but I want to know the proportions.

Mr. Neumann: Staff advise me that they got this information from the city of Ottawa, and it indicates that 52 per cent of the existing facilities would become exempt.

Mr. Denison: Oh, would become exempt. Yes, that is correct. The proposed exemption would be 56.9 per cent for the land and 47.2 per cent for the building, which equates to 50 per cent.

If I could just comment on the actual numbers that you gave out for the assessment, because there are some important equity questions about this, up until about 1980 the recreational association and Young Mens' Christian Associations and other bodies like this were assessed at a residential rate. For some reason, the provincial assessors changed them to a commercial rate, which resulted in this very high increase.

Mr. Campbell: Excuse me, Mr. Chairman. I did yield because Mr. Neumann had to leave, but I think we are entering an area that could be answered by the gentleman who will be here, to answer Mr. Swart's question. I would ask the indulgence of the chair so that I can complete my line of questioning.

Mr. Chairman: Yes, I think that is a fair comment.

Mr. Campbell: Thank you. At the point of the change in the question line, I believe you had just about completed the question about tacit support by nonintervention. The point I was making was that you did not have letters from the upper tier or the school board. I would find it difficult to make my argument to the Municipal Affairs people and to Education and Revenue if that support were not forthcoming. Those of us who have served in the municipal field, I believe, have difficulties with this kind of thing.

I would speak to Mr. Neumann's submission about grants in lieu of taxes, because that is a difficult situation as well. However, Mr. Neumann has left and I probably will not be subbing again in this committee, so I will yield to other committee members, but it would be helpful when that comes before the House.

Mr. Chairman: There are still our staff to refer questions.

Mr. Smith, to whom I owe an apology and who has also been very patient.

Mr. D. W. Smith: I think my question likely will be supplemental to some of the rest.

Once in the presentation, I thought you used the membership figure of 3,000; and then again, it would count family members, so it might go up to 4,500. Later on in the presentations I thought I heard the figure of 45,000. That blew me right out of the water, because we are really talking a horrendous difference there.

The other thing, and it has been somewhat answered by the parliamentary assistant, Mr. Neumann, is: What is the mill rate for all levels, the school board, the region and the local municipality where this building will be paying taxes? Would you have those figures on the mill rate of those three different categories?



Mr. Denison: I am sorry, I do not have the mill rate, but I can clarify the numbers on membership for you.

The numbers are actually 30,000 memberships, of which some are family memberships. Among the family memberships there are about 27,000 or 28,000 persons who are members, plus about an additional 15,000 individual members, which gives the total of about 45,000 membership, of which approximately 10 per cent are not federal civil servants or superannuated federal civil servants.

Mr. D. W. Smith: I guess when I started hearing the discussion of the presentations, I thought, "Well, this is a very small complex," but as I saw the projections on the film there, it is a huge, almost commercial operation, in my humble opinion. I am one who has sat on municipal councils, and we get very uptight when they start cutting our tax base.

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So as one member of this committee, I guess I would have to listen very carefully and closely to the presentation from the government's point of view, and unless there is further information coming forward, I think I would be one who would have to support the government on this, because we are talking hundreds of thousands; we are not just talking a few thousand dollars to these municipalities.

Mr. Chairman: Mr. Swart, have your questions been all answered or not?

Mr. Swart: No, they have not been answered. Maybe they have been answered to everybody else's satisfaction on the committee, but I still do not have the full picture. I want to know what the exemption is now on assessment which was granted by the 1961 act compared to the total assessment of the property.

Mr. Denison: OK. The 1961 act identified certain parts of the building as exempt from assessment, and what we are dealing with is the increase in size and that. Do you have a dollar amount?

Mr. Sheely: My understanding is that the current exemption is between \$15,000 and \$17,000 annually.

Mr. Swart: You would be talking, I presume, about taxes, not assessments.

Mr. Sheely: That is correct, yes.

Mr. Swart: You cannot give it to me on assessment? I am talking about the exemption that was granted under 1961 act.

Mr. Denison: I am sorry, I do not have it readily at hand.

Mr. Swart: I would fear, though, from the figures you have given, that if there is an exemption of \$15,000 and we are now saying that the taxes being paid are \$362,000, the amount of exemption is negligible in comparison with what you are asking for.

Mr. Denison: We think the exemption will be at about \$50,000 in dollar terms if this bill is enacted and the city passes a bylaw granting an exemption equivalent to the information from the regional assessment office.

I wonder if I could talk briefly about---

Mr. Swart: I would like to have my question answered. You say the exemption would be an additional \$50,000.

Mr. Denison: Not additional; total.

Mr. Swart: A total of \$50,000, and \$15,000 of that has already been given.

Mr. Denison: Yes.

Mr. Swart: So you are asking for an exemption of \$35,000 out of taxes of \$362,000?

Mr. Denison: Yes. That number \$362,000 is what I wanted to address, because there has been a change in the category of taxation. For about a five-year period, the RA and similar organizations--the YMCAs and so on across Canada--were taxed at a commercial rate, and the regional assessment office determined that really, over that period, they should have been assessed at a residential rate, as they previously were. The difference between those rates over that period for the RA amounted to something in excess of \$600,000 which was paid in municipal taxes. They started an appeal on that but then did not carry forward the appeal, because they were told that was how all the other organizations were being done.

So in a sense, this exemption is also an attempt to equalize and provide some equity for that inequity that occurred over the past five years before the regional assessment office changed its policy on that.

Mr. Swart: Just to continue further, though, on this questioning, I understand from---

Mr. Chairman: If I could just interrupt a moment on a somewhat different matter, we still have on our agenda two items, one of which is Bill Pr8, involving the city of Toronto. There are a considerable number of people still in the room dealing with those matters. There has been some communication with those applicants and the clerk, and I would suggest it is highly unlikely we are going to get to that matter today.

Mr. Kanter, who was substituting for Mr. Offer as a sponsor, has already been forced to attend to another appointment that he has pending now. As a result, I would like to suggest to the committee--and I understand this is acceptable to the applicants from their point of view--that consideration of Bill Pr8 be put over until next week. It will be dealt with either fourth or fifth on the agenda for next week. You will see there is a tentative agenda for next week, because I understand the first three and possibly the first four items will be quick, and therefore I would suggest that the city of Toronto representatives and anybody else who wants to speak to Bill Pr8 come at about 11 o'clock next week. Is that acceptable to the committee?

Agreed to.

Mr. Chairman: Therefore the people in the room dealing with the city of Toronto matter should be aware of the fact that they are invited back next week.

I am sorry for the interruption. Perhaps we can continue with our consideration of Bill Pr4.



Mr. Swart: I find myself in tremendous conflict. You are saying in effect that this bill will give a further exemption of about \$35,000 in taxes. I understand from the ministry that the way it is worded it will give the total exemption. That can perhaps be worked out, but I want to make sure that I am right in my understanding of a total exemption of \$362,000. Certainly that has to be corrected, but apart from that, I am still a bit lacking in understanding of how only 10 per cent of this total taxation would be affected if you say it is exempting only \$35,000 by just taking out the commercial aspects of the operation.

Mr. Denison: That is the present exemption, the 10 per cent number.

Mr. Swart: That is the present exemption.

Mr. Denison: Yes.

Mr. Swart: Ten per cent of the total assessment is exempted. Is that what you are saying?

Mr. Denison: It is broken down between land and buildings. The numbers are somewhat confusing, but the exemption is quite small and amounts to that \$15,000 out of the total amount of taxes.

Mr. Swart: I assume, provided there was no exemption for the commercial sector, that they would still provide an additional \$35,000 out of the \$362,000. In taking a look at those pictures of the recreational section, I have to have some doubt about that. Do you mean that 90 per cent of all of this new section should be nonexempt because it is commercial?

Mr. Denison: No, not because it is commercial. It is just not exempt now because the facilities--

Mr. Swart: I am not talking about now; I am talking about your proposals. If you cannot explain this to us, how do you expect us to understand it?

Mr. Neumann: May I just clarify one thing? As legal counsel has indicated, the proposed amendment to the original act, the bill before you, would permit Ottawa to exempt the entire amount. What is being referred to here is that they have an indication from the city of Ottawa that they would exclude, by agreement, commercial portions and so on, but we as legislators do not have that assurance. The bill would permit Ottawa to exempt everything.

Mr. Swart: I understand all that, but I also understand from the applicants that they are prepared to have an amendment, whatever is necessary so that the commercial section of this new building is not exempted.

I still go back to my original question. Do you mean that the exemption section, that section which is noncommercial, amounts to only 10 per cent, 12 per cent or 15 per cent of this total new assessment since 1961?

Mr. Denison: No, the actual commercial portion is very small compared to the recreational and cultural portion.

Mr. Swart: But I understood you to say to me that the total exemption, if this bill were passed, would be about \$50,000 in taxes--

Mr. Denison: Correct.

Mr. Swart: --out of \$362,000, and \$15,000 of that \$50,000 is already being exempted, so your new exemption would be \$35,000 out of the \$362,000, which would be about 10 per cent. Tell me where I am wrong.

Interjection.

Mr. Chairman: Perhaps it would be better to do it up here.

Mr. Sheely: The figures given by the Ministry of Municipal Affairs officials are a year old. We have been paying approximately \$130,000 a year in taxes, which we feel are unfairly assessed to us because of the classification as commercial. That matter has been redressed now and our classification is residential, so the amount of taxes we would be talking about, I think, would be in the vicinity of \$200,000.

I am not sure how the tax calculations work. I do not understand how they come to the amount of money that I owe on my own home. In fact, we would be paying about \$200,000 and we would get an exemption of about \$50,000. Why it is not \$100,000 I cannot explain to you, but part of your confusion is caused by the erroneous figures that were given originally.

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Mr. Swart: Part of the confusion too, if I may say so--I am not going to pass any opinion; I just want to get some facts out if I can--is that you have a bill before us that asks for total exemption for all of it. Is that not true, a total exemption of taxes?

Mr. Sheely: That is not our intention with this bill.

Mr. Swart: But it is in fact what is in the bill.

Mr. Sheely: Yes.

Mr. Swart: If we are going to deal this at all, we should have a bill that states exactly what you people want in this. I will leave that, but I do have one other comment. These are all supplementaries to one or another of the questions. Am I right in assuming that you people have not endeavoured, even over this period of time, to get a letter either from the Ottawa Board of Education or from the region saying whether it agrees to this exemption? You have made no such request?

Mr. Denison: No.

Mr. Swart: How long have you been working on this exemption?

Mr. Denison: The bill was filed in about February.

Mr. Swart: Of this year?

Mr. Denison: Of this year; then the matter was stood down because of the election and so on.

Mr. Swart: Thus this question: Would you think it reasonable for us to proceed on this bill when I suppose one half to perhaps two thirds of the exemption will apply to bodies which have not been approached to see if they are willing to give that exemption?



Mr. Denison: We thought it was reasonable under the circumstances.

Mr. Smith: Could I just make a comment? Oh, sorry.

Mr. Chairman: Mr. McCague has been very patient and Mr. Beer some time ago indicated he wanted to make a comment, so I am inclined to go to them first.

Mr. McCague: Thank you, Mr. Chairman. Relevant or not, I would like to ask this question: What are the fees to belong to the recreational association?

Mr. Sheely: The membership fee for an individual is \$30 a year and for a family \$35 a year for people who are members of the federal civil service. I am blocking on the figure, but it is approximately 10 per cent higher for people who are not members of the federal civil service. In addition to that, the members of the association pay for the activities they wish to participate in. If they are members of the stamp club, they pay approximately \$20 a year to be a member of that. If they are members of the squash club, they pay approximately \$200 a year to be a member of that. We make the swimming pool available to the citizens of Ottawa at a charge of \$1. It is the only outdoor swimming pool in the city of Ottawa, believe it or not, and so we charge on the basis of that kind of fee structure; quite limited.

Mr. McCague: Are the commercial endeavours that are in the building owned by the RA?

Mr. Sheely: They are operated on a licence agreement.

Mr. McCague: What kind of an agreement is that?

Mr. Sheely: In other words, we give the agencies that operate, for instance, the travel and sports boutiques the authority to use our name and we provide space for them. In exchange for that, they pay in the form of a percentage of the revenues they earn towards the operations of the association to help subsidize costs, etc.

Mr. Chiarelli: They also pay business taxes, incidentally.

Mr. McCague: I think you present the committee with a very difficult decision in view of the fact that the ministry has told you it is not in favour of this exemption, which I understand you knew before you came here, and in view of the fact that the minister said to you on April 24 that he was unable to support the application because of the absence of any agreement by the regional council and the school board.

That makes it very difficult to support it. We have had others in committee in years past. I feel that your fees are attractive. All of us represent municipalities that would like to have a facility like this and the fees the people pay, and probably would not consider asking for a tax exemption. It is a very difficult proposition you have put before the committee today. Therefore, I would have great difficulty in supporting it.

Mr. Chiarelli: If I can make one comment regarding the member's comments, I believe there is a procedure in committees, and in this committee as well, to defer a bill pending further information. We are confident that the regional municipality of Ottawa-Carleton and the school boards will provide endorsement for this bill. If it pleases the committee, we could defer

it pending tabling or presentation at a subsequent meeting of these suggested consents.

We believe there is a lot of merit to the case, to the bill. We were perhaps presumptuous in assuming that, because 100 per cent of the councillors at the city of Ottawa supported it and formed 50 per cent of the regional municipality, there really was a consent there. Of course, the school boards did not respond to the advertisements. Perhaps that was not as critical as some of the members feel it is. If that is a significant element in the minds of the members of the committee, I ask the committee to consider deferring the bill pending our presentation to the committee of the necessary approvals of the other tiers that are involved in this.

Mr. Chairman: I would have made the suggestion if you had not raised it yourself. The applicants might also wish to consider amendments to narrow the scope of the bill. I take it that was part of the problem some members had. Is there anybody who wants to move that deferral?

Mr. Swart: I want to speak to it. I do not want to move it.

Mr. Chairman: Let me have it moved first.

Mr. Campbell moves the bill be deferred.

Mr. Swart: I do not think deferral or referral is perhaps a proper move. We have a bill before us which does not say what they want; at least, if I can interpret the bill, it would appear it is asking for four times as much as they really want, even with the \$200,000 figure. Given the other criteria which are not being met, it seems to me the proper thing to do would be not to deal with this bill now and to turn it down. They should produce the kind of bill they really want and perhaps have consultation with the ministry about it. When the bill is turned down, then there is nothing to stop anybody from bringing it back again at a later date.

I did not speak to the bill; I just asked questions. But I do want to say that when I saw the slides, I was very tempted to ask for an application form although the commuting distance for me from the Niagara Peninsula makes it rather difficult. There is no doubt about the tremendous facilities you provide for the people of Ottawa. There is no question about that.

However, there are the other principles. I think this brings up a point I have to make to the parliamentary assistant, which is that I really resent having to make these kinds of decisions in this committee when I live 400 miles away from Ottawa. I was on municipal council for 21 years and I know the whole cycle that this whole matter of exemptions has gone through during that period of time. It was 40 years ago when I first went on municipal council. At that time, municipal councils did have the authority to make exemptions for charitable organizations. That was ultimately taken away from them because the province felt there was such a contrast in what municipalities were doing. Now we have the worst of all worlds. There are criteria here that we do not have to go by and, it seems to me, this committee does not have to go by. We can grant anything in the world to the groups that come before us.

It seems to me the only sensible thing is to get some government regulations, and I want to fault the governments, including this one, for not having those kinds of regulations on the books with regard to exemptions so that the public and the organizations know the category they fit into instead of having to come before us. "I understand you had an exemption before, even



though it was 27 or 28 years ago." "Why should we not have it for the whole thing?" I can understand that reasoning. There is nothing any place in the legislation or regulations that indicates the criteria that have to be abided by.

I would just say to the parliamentary assistant that he should urge the government to put in regulations something that even this committee has to follow so that we can determine the appropriate granting of exemptions to charitable or whatever organizations the government deems should be entitled to those exemptions. It should set up at least a framework instead of what we have at the present time.

I come back to what I said before, given not only the criteria the government has before us not being met--the sort of guidelines, I suppose you would call them--but also the precedent this would set. I have in my municipality at least 10 ethnic halls that have playing fields for soccer and a great variety of things. If this passed, they would be and should be entitled to the same kind of municipal tax exemption. I hesitate to sit here and give the tax exemption to you people, knowing that back home in my riding there are all those other kinds of groups that are nonprofit, are providing a great service to the community, but are paying full taxes on all the property they own.

I suggest that rather than defer this bill, it should not be reported--that in essence is a deferral--and that once you have at least the present criteria that you do not meet worked out, you should come back with the bill again. That would be my suggestion, rather than just deferring the bill, which you are not asking for in any event.

Mr. Chairman: Mr. McCague, on the deferral matter.

Mr. McCague: I was just going to ask a question. Is there any procedure by which the recreational association can withdraw the bill at this moment?

Mr. Chairman: They can withdraw it. I am not hearing them ask for that. If they withdraw it, I suppose it has the same net effect as having the matter not reported because they have to start all over again. I take it the advantage to them of deferral is one of time and money. It does not alter the capacity of this body to make the decision. If they have to go back and then produce the amendments, if they think that is appropriate--I suspect they are listening carefully--and get other bodies to agree, all that sort of thing can be done without their, say, placing new ads and going through the printing costs. I suspect the printing cost is the highest single expenditure.

Mr. Neumann: I would like to point out two pieces of information the committee should be aware of. First of all, in response to Mr. Swart, the government does have under active consideration a review of this matter with the idea of, possibly, general legislation that would allow the local municipalities to do this by bylaw, provided they meet certain criteria.

Mr. Swart: I have been hearing that for five years.

Mr. Neumann: While I cannot say anything more than that because it is a matter the minister may take to cabinet, the minister and the other ministries he is working with would be pleased to hear from this committee as to any suggestions it has, whether it should be done by general legislation permitting municipalities to do this, with certain criteria, or whether it

should be done, as Mr. Swart suggests, by regulations that this committee would then have some guidance on.

The other point that Mr. McCague raised--what was it again? It slipped my mind.

Mr. McCague: Is there a provision for withdrawal of the bill?

Mr. Neumann: I wanted to bring something to your attention in that regard that the applicant and the committee should be aware of. While I would prefer to see the bill not reported, if the applicant is forced to reapply, the applicant then comes in under the new standing orders, which have been changed.

If an applicant comes in for an amendment to an existing act, from this point on the committee will have the opportunity to review the entire act, including the original one. At present, what is before us is only the amendment and we cannot look at the original act. This will not be true for any future applicant. By not reporting and forcing to reapply, the committee would have greater latitude in reviewing not only the expanded exemption but also the original exemption.

Mr. Chairman: Can we deal with the deferral? Mr. Beer, do you have a comment on that?

Mr. Beer: Yes. I think the dilemma we have all had is that we fully support the facility and the things it does, but there are a number of problems we have with specific aspects. With respect to the deferral and the point Mr. Neumann made--it was one of the questions I had--I felt that Mr. Chiarelli's point, that we were amending an existing act, to me had certain validity that needed to be considered, that this was not something brand-new and I wanted to explore that.

I would be concerned, therefore, that if we totally rejected the bill--my terminology may not be correct here. I think there are some questions, but in fairness, as a matter of equity, I believe this bill should be looked at in terms of the standing orders as they then were; that is only fair. If I understand this correctly, by deferring we would still have the right ultimately to reject. I am not saying necessarily that is going to happen, but it does not affect our ability to reject.

The point that has been made about the amount of money we are talking about and the other tiers in the school boards is important. Some other issues have been raised which, in the interim, might be able to be worked out between the applicants and the ministry, but I would not want to impose an additional hardship on them, as long as it is fully understood that we might not be able to work this out. I hope we can. That would be my understanding of the deferral, and then not to add on other problems which, in fairness, I do not think they ought to have to carry.

Mr. Chairman: My inclination is to call the question on the matter of deferral as a point of information.

Mr. McCague: Did you get a motion?

Mr. Chairman: There is a motion from Mr. Campbell.

Mr. McCague: Do you have one?



Mr. Campbell: Yes, I do.

Mr. Chairman: Just as a matter of information to the applicants, when you would come back is a matter that in essence would be negotiated with the clerk, for all practical purposes.

All those in favour of the motion of deferral? Opposed?

Motion agreed to.

Mr. McCague: That concludes this matter but does not conclude the matters before the committee.

Mr. Chiarelli: Mr. Chairman, as sponsor of the bill, I want to thank you and the committee for a full and fair hearing. We respect the matters that have been raised and will try to address those in the months ahead.

Mr. Denison: May I also add one thing? I thank the committee for the thorough way you have looked at this. I appreciate it.

Mr. Chairman: You are quite welcome, and we will see you, presumably, at another time.

In light of the time, I would like to perhaps encourage the focus of attention on the discussion on Bill Pr7. This is a matter which came up last week and there should be circulated to all members a memorandum emanating from the Ministry of Transportation, telling us what the position of the ministry is. If I might make an editorial comment, they seem to be firmly on the fence.

Is it Mr. Kennaley? Have I remembered your name correctly? He is here representing the proponents. I am not sure that I see anybody else dealing with this matter. Please feel free to come forward; there may be questions posed to you.

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We are really into a procedural issue here; that was all the committee intended to deal with today. The matter is deferred in the same fashion as the last bill we just dealt with. I am open to any suggestions that members of the committee might have, but my sense is that we now know at least a little bit more what the government thinks. It is perhaps a question of whether it can be arranged that the applicants and those who are opposed can come back on another day. I want to throw the matter open. Are there any questions from any members of the committee?

Mr. Campbell: This is not a question, just a comment. This has been the position of the Ministry of Transportation for quite some time. I am not speaking for the ministry but as a former driving school instructor who has gone through part of this process. It is very clear that self-regulation is the norm. There is a misunderstanding of the situation. Somebody is accredited and somebody else is not. It has been a long-standing policy, I believe, of the ministry that self-regulation is the way to go. It is their preference. That is my understanding of it.

Mr. Chairman: Have you seen this?

Mr. Kennaley: I am not aware of anything recent on this.

Mr. Chairman: The clerk will provide you with a copy of it.

I did not realize that we had an expert from the field among us on the committee. We are pleased that you are here.

Mr. McCague: I wish you could have been here last week.

Mr. Campbell: Somehow when I saw it, I guess it was appropriate, an intuition.

Mr. Chairman: Indeed, it was. We may have you sub back in the next time it comes up.

Mr. Campbell: No.

Mr. Chairman: I do not know if there is anything else that committee members want to deal with on this one.

Mr. Swart: I think it goes much further than just an issue of self-regulation. We are talking about Bill Pr7, are we?

Mr. Chairman: Yes, although we are orienting ourselves towards the procedure we are going to use to deal with it.

Mr. Swart: It is an issue of whether one group has self-organization or whether you have self-organization for all the people who are in this field. That is my concern. There is more than one group. I wonder if there has to be a body set up, analogous to the College of Physicians and Surgeons of Ontario, so that you can go right to the top, that would supervise all this. That is the problem I have. I do not have anything more to add at this time, because we will be coming back to all this.

Mr. Campbell: To answer Mr. Swart's concerns about regulation, there is a section which presently exists in the Ministry of Transportation which licenses and generally approves of the conduct of driver education, driving schools and so on. I believe that one still has to get a special licence to teach driving. This licence entails certain knowledge of rules, regulations, driving skills and teaching skills.

I think what this is saying is that the Ministry of Transportation is dealing totally with the idea of self-regulation, whether it be Young Drivers of Canada or other groups that have followed this route to be self-regulated and self-accredited without the advantage of the Ministry of Transportation giving preference to one group over another. I think that is the issue. I hope that answers Mr. Swart's concerns.

Mr. Chairman: There was certainly some discussion at length last time as to what different initials meant and that sort of thing and what wording might or might not be appropriate.

Mr. Beer: I find this memorandum, while somewhat helpful, still leaving a number of questions. As we are focusing on where we go from here, I would assume that at some point in the new year we would reschedule this bill. I think there were questions raised earlier about the policy of the ministry with respect to where it is going. While it seems to indicate here what Mr. Campbell has mentioned, none the less, with the other interveners who were here, there was a number of questions of just where the Ministry of Transportation wants to go. I think a lot of us did not have a problem per se with self-regulation or indeed that there might be one, two or three organizations. The public policy on this was not and still is not clear, to my



mind, in terms of directions that the ministry would want to indicate to this committee.

As someone who is new, I have found the last two weeks to be a fascinating educational experience, but one of the things that has caused me concern is making a decision at times without, if I can phrase this diplomatically, as clear a sense as I might like, in terms of what the relevant government department or ministry would--

Mr. Chairman: It was very diplomatic.

Mr. Beer: --see as being preferable, notwithstanding the excellent interventions that have been made by our colleagues at different times.

Mr. Swart: You are getting even more diplomatic.

Mr. Beer: I think the memorandum Mr. Neumann provided for us was extremely helpful in focusing, and his comments in that area were most helpful. I really find on this one that I still need more information and discussion with the Ministry of Transportation, whether it be with the minister or others. As we said last week, this is certainly a bill that must come back, and I would hope we can schedule that early on.

Mr. Chairman: I am inclined to agree that the information is not wonderful in its entirety, but we are a little bit better off. My sense is the applicant now has a better sense as well of what is going on and what the government may have to say. Presumably, we would bring it back and deal with it, with whatever information we have available.

I really want to focus on procedure here, and that is a motion to have the matter brought back--

Interjection: It was not deferred; it was tabled.

Mr. Chairman: It is already deferred, I guess. We do not really need a motion.

Mr. Swart: We have no motion to take it off the table, so it is still tabled until the time comes when we want to deal with it.

Mr. Chairman: OK. May I have a moment?

Mr. Swart: If a motion is tabled, it can be taken off the table by motion at any time, and when we are ready to deal with it, I think that will be done by members of this committee.

Mr. Chairmn: Fair enough.

Mr. Beer: Next week we have specific bills to deal with. In terms of this one, the committee would decide whether we would deal with it at our first meeting in the new year or at some later date. Is that correct? That is our decision, or does the clerk simply--

Mr. Chairman: As a practical matter, it will pop up on a tentative schedule one week. When we allow the tentative schedule to go through, that will amount to bringing it off the table, and it will show up the week after that. My inclination is to let that process continue, because the clerk will be far more capable of dealing with the logistical problems than we are now.

The clerk has already indicated to me that she wants to rearrange the order slightly. I do not think the details are terribly important, but it should facilitate for next week the way in which we deal with matters.

Any other questions?

Mr. McCague: Do I understand that Bill Pr7 will not be on the agenda next week?

Mr. Chairman: Unless we are going to order it now, it will not be. That is correct.

Mr. McCague: Thank you.

Mr. Chairman: I might also add, just for the information of the members, the scheduled appearance before the Board of Internal Economy did not take place last Monday but is now scheduled for next Monday.

Mr. McCague: You can pay us later.

Mr. Chairman: I thought you might have an interest in it. I will let you know next Wednesday where we stand on that.

Mr. Sola: What was the reason for putting Bill Pr7 on the agenda for today and bringing in a witness if we have no intention of dealing with the matter?

Mr. Chairman: In fact, that is not what we did. What we indicated was that we would look at it from a matter of procedure. We were in some time constraints last week. I think I made it pretty clear that there was no obligation on the part of any of the parties, either the applicants or the applicants or those opposing it, to come back.

I did not really expect anybody to come back. It was totally up to them. Really, it was to let us sort out in our own minds what we might want to do and, frankly, it allowed me to try to get something out of the Ministry of Transportation, so that I would have some idea what they had to say.

Mr. Swart: Just for the sake of Mr. Kennaley and others who are concerned, it would seem to me to be reasonable that at least the week ahead of when we are going to deal with this bill, we should move that it be taken off the table and dealt with at such and such a time, so that they will know in advance and do not need to worry about our slipping it through when they are not here. I would think maybe you, Mr. Chairman, should give them that commitment.

Mr. Chairman: That has to happen anyway. That is not difficult. We will not deal with it without your knowing about it.

Mr. Kennaley: I take it then that the time is probably quite indefinite right now.

Mr. Chairman: At this point, that is quite correct.

Mr. Kennaley: Thank you.

Mr. Chairman: Thank you very much to all the members and to all the people who appeared and the staff.

The committee adjourned at 12:22 p.m.





STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

ASSOCIATION OF REGISTERED WOOD ENERGY TECHNICIANS OF ONTARIO ACT

SUDBURY CARDIO-THORACIC FOUNDATION ACT

TORONTO SKI CLUB ACT

353583 ONTARIO LIMITED ACT

CITY OF TORONTO ACT

COMMUNITY YOUTH PROGRAMS INCORPORATED ACT

WEDNESDAY, DECEMBER 16, 1987





STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

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Cleary, John C. (Cornwall L)

Fawcett, Joan M. (Northumberland L)

McCague, George R. (Simcoe West PC)

Pollock, Jim (Hastings-Peterborough PC)

Pouliot, Gilles (Lake Nipigon NDP)

Ruprecht, Tony (Parkdale L)

Smith, David W. (Lambton L)

Sola, John (Mississauga East L)

Swart, Mel (Welland-Thorold NDP)

Also taking part:

Campbell, Sterling (Sudbury L)

Carrothers, Douglas A. (Oakville South L)

Kanter, Ron (St. Andrew-St. Patrick L)

Lipsett, Ron (Grey L)

McGuigan, James F. (Essex-Kent L)

Clerk: Manikel, Tannis

Staff:

Mifsud, Lucinda, Legislative Counsel

Witnesses:

From the Canadian Wood Energy Institute:

Guenin, John A., Executive Director

Howard, Pamela, Vice-President

From the Ministry of Municipal Affairs:

Neumann, David E., Parliamentary Assistant to the Minister of Municipal Affairs (Brantford L)

From the Ministry of Consumer and Commercial Relations:

Haggerty, Ray, Parliamentary Assistant to the Minister of Consumer and Commercial Relations (Niagara South L)

From the Toronto Ski Club:

Hubbard, Peter, Legal Counsel; with Hubbard, Favaro

From 353583 Ontario Ltd.:

Chertkoff, S. B., Legal Counsel; with Griesdorf, Chertkoff, Levitt

From the City of Toronto:

Foran, Patricia F., Deputy City Solicitor

Individual Presentations:

Archer, William L., Legal Counsel; with Hughes, Archer

Davis, Carl B., Legal Counsel; with Chernos, Conway and Hutchinson

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Wednesday, December 16, 1987

The committee met at 10:25 a.m. in room 151.

Mr. Chairman: Let us get under way then, please. I would like to just fill in the committee officially on a couple of factors that will affect our plans. One is that the budget has been accepted by the Board of Internal Economy and the other is that there will not be a meeting of this committee between sessions, prior to the return of the House in February.

I am suggesting that, on the day in February that we return, we deal with regulations only and between sessions, in February, March or the first week of April--the House is due to return April 5, at least tentatively--we will have a chance to return to private bills. We would be subject to any dire emergencies that might arise with respect to a private bill, but I think the plan to deal with regulations would be appropriate, given the interest people have expressed and the material to cover. I will undertake at least to speak with the counsel about anything else he thinks might be useful.

ASSOCIATION OF REGISTERED WOOD ENERGY TECHNICIANS OF ONTARIO ACT

Consideration of Bill Pr21, An Act respecting the Association of Registered Wood Energy Technicians of Ontario.

Mr. Chairman: That having been said, we are ready to commence with the first item on the agenda, Bill Pr21. I also indicate, just so everybody is aware, that we tentatively aim to start at 11 o'clock on the matters dealing with the city of Toronto. People will have a sense of the time to allocate so that we can get through all the things that are lined up beforehand.

Mr. McGuigan, you are the sponsor of Bill Pr21. Perhaps you can introduce yourself.

Mr. McGuigan: Thank you, Mr. Chairman. Since this is my first time appearing here, I would like to begin by congratulating you on your chairmanship. I am sure you are going to find it very interesting, and we are going to find it very useful working under you.

I have with me, starting on my far right and your left, Mrs. Pamela Howard, who is vice-president of the Canadian Wood Energy Institute. Next is John Guenin, who is the executive director of the institute, and on my immediate right, Robin McDonald, who is the lawyer for the group. Incidentally, his bill has been ticking away all the time we have been waiting here. I bring that up because it is unfortunate that we have had a delay.

My interest in this goes back a long time. I was born and raised in the country and am accustomed to wood heating. Since I am an orchard farmer and one of our byproducts in the disposal of those orchards is cherry and apple wood, which are excellent woods, I have heated my own home for the last 27 years or so using wood heat.

For those people who lost the art of wood heating, which occurred once Canada became an industrial country, and who have now been reintroduced to



wood heat because of the energy crunch, the cost of energy and, I think, the popularity of the back-to-the-earth movement in wood-burning and the introduction of new wood-burning stoves, there is a great deal more concern with the old art. It is now is a very highly technical business. Wood is probably the most dangerous--I hate to say that to alarm people--fuel that we have in that it comes in many forms, woods with different heating qualities.

There was one wood we used to use occasionally, poplar wood, which had the name gofer wood. It received that name not from the animal but from the fact that you stuck a couple of chunks in the stove and then you went for some more. You go from that sort of wood with a very low quantity of heat to the very heavy woods. I think hickory is one of the top BTU producers. People get intense heats from these devices and burning these fuels, which can be destructive of the surrounding material in the house, the chimney and so on.

I simply say that I am happy to introduce this group to you and sponsor this bill.

1030

One of the points of history is that there was a task force appointed by the former government to investigate wood heating. I would like to feel I had a hand in that because, when I was in opposition, going back to 1978, 1979, 1980, I asked a lot of questions in the Legislature about the safety of wood-burning devices. I think perhaps I am going to credit myself with at least being one of the people who brought about that task force.

Without further from me, I will turn you over to the executive director, Mr. Guenin.

Mr. Guenin: Thank you, Mr. McGuigan. Mr. Chairman, members of this board, visitors, it is a privilege and an honour for me to make a few comments on the request of the institute to have a formally organized and incorporated organization here in Ontario.

I would like to suggest to you some reasons why the organization Wood Energy Technicians of Ontario is requesting incorporation. First, in 1984 we were requested to go around the country to visit the major cities and ask what the opinions of the building inspectors, the fire prevention officers and the industry were, regarding the problem of safety in wood-burning. From this national seminar tour, which happened in 1984, came a very specific and direct response. There is a major problem of people, installers, and home owners putting up systems for wood heating in their homes that do not correspond to the norms and codes that are in place.

During that time, as mentioned by Mr. McGuigan, an Ontario task force was appointed by the then government. It was also, as was mentioned by Mr. McGuigan, strongly requested by the opposition at that time. This document that has been given to you pointed out exactly the same conclusions as those we found on the national seminar tour. I would simply like to read, on page 12, if you have the report here with you, some of the conclusions that were drawn.

There was a special study done in New York state, because there was no specific information here in Canada, which indicated very strongly that there was a serious problem. On page 12, the last paragraph on the right-hand side, I read these conclusions: "Only 5.5 per cent of the systems inspected were considered safe, while 24.7 per cent were found to be unsafe, 57.7 per cent hazardous and 12.1 per cent extremely hazardous."

Safety was assessed on the basis of a very comprehensive 15-point checklist of installation safety factors, ranging from flue pipe clearances to floor shielding. The home owner installed 63.1 per cent of systems. Professionally installed systems were generally no safer than home owner installed systems.

This committee or task force, which met for two years, came up with a series of 13 recommendations. These recommendations were given to the government of Ontario and accepted, and in particular, the stress or the accent was on training of the professionals and consumer education. The industry then undertook to do three things:

First, we prepared a training manual, which I have here with me, which was funded by the federal government in totality.

Second, we created in every single province, and in Ontario in particular, a wood heat safety steering committee. The wood heat safety steering committee in Ontario had representatives from four ministries: the Ministry of Housing, the Ministry of Energy, the Ministry of Consumer and Commercial Relations and the Ministry of the Solicitor General, plus representatives from the Insurance Bureau of Canada, the insurance advisory council and the Canadian Wood Energy Institute.

This organization, which has been meeting on a regular basis for the past year, decided it would promote and foster the implementation of a training program in Ontario strictly geared to the training and updating of information for the wood-heating professionals, who are installers, chimney-sweeps and retailers.

Third, the institute decided that in every province we would like to have an official organization which would be the component that would monitor the absolute implementation of the training program and a consumer education program. We therefore decided on the creation of WETO, the Wood Energy Technicians of Ontario. The reason we are here this morning is to request that this organization be fully incorporated in Ontario so that the certification program as well as the consumer education program can be fully recognized by the public and the professionals.

Those are simply some comments I wanted to make on our request, and we would be pleased to answer any questions you would like to ask.

Mr. Chairman: Thank you very much. Is there any comment from the government representative?

Mr. Neumann: I have three memos.

First of all, I would like to commend the organization for its very fine work. You can see from the presentation that what we are talking about here is the preservation of lives, I feel, in developing a new element of safety.

This is from the Ministry of Housing: "This bill comes as a result of a task force report on solid-fuel safety which recommended a provincial certification program for solid-fuel appliance installers. As an alternative to mandatory provincial certification, the CWET, Ontario chapter, was encouraged to set up a private sector program which would encourage installers to become better trained. The objects of the new association will no doubt contribute to solid-fuel safety in Ontario." It is a supportive memo.

From the Ministry of Energy: "The Ministry of Energy supports Bill Pr21.



Enactment of this bill will hopefully improve the qualifications and competence of installers, chimney-sweeps and inspectors of residential solid-fuel-burning systems and lead to reduction in the number of wood-burning fires, injuries and fatalities in Ontario."

I also have a very short memo from the Ministry of the Attorney General indicating it has no policy concerns at all with this bill.

The indication is that the government is very supportive of this initiative.

Mr. Ruprecht: I am very impressed with the work of the association and I have a question you are able to answer. In order to rename the Ontario branch of the Canadian Wood Energy Institute as the Association of Registered Wood Energy Technicians of Ontario, do you think the potential for wood-burning as an energy source for home heating would be increased because you would raise public awareness or is the major thrust of the new framework organized to prevent disasters such as house fires, deaths and so on, or can you do both?

Mr. Guenin: I will answer that question. I think it can do both. The institute has just organized a three-month national travel show to inform the consumer of some of the problems. In our discussions with the consumers across the country from coast to coast, and in Ontario in particular, it was brought to our attention that a lot of people still have a certain fear of flames, of wood-burning in the house, and it was very interesting to note that many of the consumers seemed more confident, a little more appeased when we told them of the program the organization was putting together. So yes, I think it will have a double effect: first, of giving unity, harmonization of understanding of codes, standards and installation procedures; second, of giving more indications and more reasons for people to go into wood-burning.

Mr. Ruprecht: Can I ask one other question that is related to that one? As your association sees it, do you see the potential of wood-burning as an energy source having reached its 50 per cent market potential or do you expect it to go much higher? In other words, do you foresee a time in the future where most homes in Ontario can be or might be heated in this particular fashion?

1040

Mr. Guenin: I would answer this by saying yes, I think there is still great potential. When we consider the sales figures and the types of appliances now being sold, we notice there is a great demand for this at this point for supplementary heat, not as a main source of heat. I do not have the statistics here but I was talking with several outlets where these sales are being done, and definitely, in new housing for example, many more people now are requesting this as part of their construction, which was not the case, I would say, five or six years ago.

Mr. Ruprecht: Are you organized in such a way that you have an outreach type of program, not just the technical training outreach but in terms of converting or, as you say, as an additional source of heat for the home? Do you have a program of that nature?

Mr. Guenin: I think that program will come through the consumer education program we are working on with the Ontario government.

Mr. Ruprecht: You would develop such a program or are you in the process of developing it?

Mr. Guenin: I think we would develop such a program. We have not developed it at this point in time because we are having a hard time keeping up with the demand at this point in time, but definitely, when we level out, there will automatically be a desire to go further than what we have been in the past.

Mr. Ruprecht: Your sponsor might want to expand to the point where you are asking the government to provide millions of dollars for such a program. Of course, you are not asking us for that now, are you?

Mr. McGuigan: I am not going to ask for millions of dollars, but I would like to add this: It is estimated that in Canada today for home heating we use \$1 billion worth of wood, which is a renewable resource and replaces, especially here in Ontario, fuel brought in from the United States or other parts of Canada.

I was parliamentary assistant to the Minister of Energy in the last government and going back to my interest in this matter, I remember--I cannot give you the source of it--a statement made that Ontario could supply 100 per cent of the heating needs of Ontario from the forests of Ontario, without cutting into the paper and lumber needs; there is that much forest in Ontario and there is that much waste.

I have to qualify that a bit. In the last four or five years, many of the forest industries have turned to waste wood as the source of their energy and they have become much more efficient. They are burning the waste wood themselves. Added to that, of course, is the problem of transporting it from many hundreds of miles away--it is a bulky commodity--and bringing it to places such as Toronto.

Just to put this in the perspective of the world, about 80 per cent of the world's people depend on wood for heating their meals. What is the raw material in greatest supply at the moment? It is firewood. Many of the people in the world, in Asia and Africa, rely on firewood to make their meals. We have tremendous potential for increasing the use of firewood, but it must be done safely.

Mr. Pollock: Let me compliment your association on your efforts to protect property and save lives. Being a former volunteer fireman, I am well aware of how many fires were started by faulty wood stoves and that sort of thing. Since you have been involved for a few years, have you any statistics to show where your organization has actually helped to save lives and that sort of thing?

Mr. Guenin: There has been an informal awareness program being put on by the members. Really, this is the first step in the direction of formally organizing the promotion of safety in wood-burning.

We have Canada Hotline, which is our newsletter, in which we promote this, but I must admit very candidly that we have not been very strong yet in the formal promotion of these types of programs. It is by going through this channel that we hope to give more exposure to the notion of safety in wood-burning through the different media that we will be using, hopefully within the next six to eight months.



Mr. Pollock: But you have no statistics as of yet and of course, once again, it is pretty hard to get a handle on that. I am sure there has been far more wood burnt over the last four or five years because of the price of oil going up.

Mr. Guenin: For your information, without having the specific statistics, we do feel there is a levelling off of the problems. In spite of the fact that insurance companies are indicating they still have too many claims, if we were to prorate the number of appliances being sold to the number of deaths and/or claims that are done, I would think we would see not only a levelling off but also a slight decline.

Mr. Beer: I would also say that I think we are all very impressed with the proposal and if there are no other questions, I would move that we close the questions.

Mr. Chairman: Before we do that, Mr. Haggerty?

Mr. Haggerty: I just want to advise the committee members that, dealing with Bill Pr21, the companies branch has no comments or objections to the passage of the bill.

The other matter is to congratulate the association in bringing forward this bill, because it certainly does fall in line with the Ministry of Consumer and Commercial Relations in the matter of consumer safety.

I have one question, though, and it deals with your classroom training program. It is in the tract that I just presented to the committee. It says, "For the applicants with limited field experience and apprentices, classroom training is required." It goes on to say that the length of this training period depends upon the course but is selected from 50 to 100, and you have a list including space-heating technicians and about seven categories there. Is this going to be handled through a college? You are going to certify somebody here if you are dealing with the Apprenticeship and Tradesmen's Qualification Act, as it would fall in line with the Ministry of Skills Development.

Mr. Guenin: I am pleased to inform you that we had a meeting no later than two days ago with the Ministry of Skills Development and the Ministry of Labour and they were also quite impressed by the program we are putting together. They have informed us that we should go through their channels, because yes, we are planning to utilize one of the colleges, George Brown College, but we are at this point in time in the negotiation process. Nothing is crystalized; nothing is written in rock. I believe that, if at all possible, we will go through that channel to give more strength to the program.

Mr. Haggerty: In the long run, you are handing out a certificate that the person is qualified.

Mr. Guenin: That is right.

Mr. Chairman: Before I deal with the motion Mr. Beer had, I would like to inquire, is there any intention to move an amendment? Being no indication, Mr. Beer, you have moved, I take it, the whole bill as printed?

Mr. Beer: Yes.

Mr. McGuigan: Mr. Chairman, this is short, but I wonder, could I ask a question?

Mr. Chairman: Sure.

Mr. McGuigan: In the task force and in your own investigations, did the question of the source of whatever come up and the danger of introducing termites and powdered post beetles and things like that to your house by bringing in trash wood or burning old railroad ties and that type of thing? Did that question ever come up?

Mr. Guenin: Or bringing in spiders and other things. It has not formally been brought up. Comments have been made to that effect, but since the 1970s when we started really to exist, we have not heard of any major problem in that area.

1050

Mr. McGuigan: I just raise this so that we get it on the record. The old timber frame barns were prominent in Ontario and farmers and others are getting rid of those. It is a great source of bringing them in if there happen to be termites in that area. It is very restricted in Ontario but it is a pretty good way of bringing them into your home, or powdered post beetles. A little bit of caution should be used in sourcing the wood.

I wonder if Pamela Howard, the vice-president, would care to say anything?

Mrs. Howard: I think, through the institute, it has been recommended procedure--not official but in our education programs--that only a short-term amount of wood be brought into the home, not huge quantities stored for any length of time. The way we have addressed that is maybe no more than 24 hours at a time.

Mr. Chairman: I am mindful of the time.

Mr. Guenin: I just want to give you my appreciation from the board of directors for having taken the time to listen to us and for the comments that were made. We would like to leave you with a little souvenir. Thank you very much.

Interjection.

Mr. Guenin: It was the 10th anniversary of the institute this year.

Mr. Ruprecht: Mr. Chairman, I do have a question after all. Is this worth less than \$250 or more than \$250?

Interjection: It does not give you conflict of interest.

Mr. Chairman: This is an excellent example for you to set for other applicants.

Section 1 to 15, inclusive, agreed to.

Bill ordered to be reported.



## SUDBURY CARDIO-THORACIC FOUNDATION ACT

Consideration of Bill Pr23, An Act to revive Sudbury Cardio-Thoracic Foundation.

Mr. Chairman: Perhaps I might call forward the next applicants with Bill Pr23. Mr. Campbell is the sponsor. Mr. Campbell, would you introduce yourself and the applicant?

Mr. Campbell: Mr. Chairman, we are pleased to be here today. I congratulate you on your chairmanship and I look forward to working with you in the future. I had the pleasure of sitting as a substitute on this committee last week. It may help to maybe cut some of my comments to a minimum, as I understand your committee is pressed for time.

I would like to introduce Andrew M. Little, a solicitor with Weaver, Simmons in Sudbury, who is here to answer any of the technical details of this.

By way of introduction, we have no gifts as the previous applicants did, except for the gift of life and that is the Sudbury Cardio-Thoracic Foundation. The group has been very active in the field of cardio-thoracic medicine. We have a very excellent facility at Sudbury Memorial Hospital. In fact, a number of heart-related operations are being done in Sudbury on Toronto residents, taking some of the overflow out of Toronto and helping the whole health care field in the whole province.

As I understand it, the usual reason for lapses of these kinds is interest falling off, perhaps, in the organization. Unfortunately, this is not the case. The solicitor who previously had this was a former member of this Legislature for Sudbury, Elmer Sopha. As a result of his untimely death and the lapse of his practice, this organization lapsed. I do not know the technical details--I am not a solicitor--but in this case, when Weaver, Simmons took over the practice, it was found that this foundation had, in fact, lapsed, and we are appearing here to try to revive a very active organization, but through the circumstances I mentioned.

I might refer any technical details to Mr. Little who is representing the group.

Mr. Chairman: Is Mr. Little ready to speak?

Mr. Campbell: He was really here to answer any questions the committee might have due to the pressing nature of time you are under.

Mr. Chairman: Is there any commentary from the government, Mr. Haggerty?

Mr. Haggerty: I have been advised by the companies branch that it has no comments or objections to the passage of Bill Pr23.

Mr. Chairman: Mr. Callahan, I might say I am honoured to have the former chairman here.

Mr. Callahan: Not at all. It is nice to be here.

Mr. Ruprecht: Before we move the question, I have one short comment. As I used to live in Sudbury for quite a number of years and had the pleasure

to meet Elmer Sopha, and since you indicated--was he actually the founder and organizer of this--

Mr. Campbell: No, Mr. Ruprecht. He was the solicitor for the group. After serving his term in the Legislature, he returned to the private practice of law. Unfortunately, a sudden and untimely death occurred. His practice was still active and due to the lapse in that practice, I guess, with the changeover to the new solicitors who took over his practice, this fell between the cracks, if I might use that term. That is what happened.

Mr. Sola: Just for the record, I want to point out that my brother works for the same firm as the solicitor here and Sudbury is my home town, so I am less than objective in regard to this bill.

Mr. Ruprecht: You have a conflict of interest.

Mr. Sola: That is why I put it on the table.

Sections 1 to 3, inclusive, agreed to.

Bill ordered to be reported.

Mr. Campbell: Thank you very much, Mr. Chairman and members of the committee, for listening to our deliberations.

Mr. Chairman: We were very pleased to do that.

Mr. Lipsett and the applicants for Bill Pr54 are required next.

Mr. Callahan: Mr. Chairman, I am going to remove myself from discussion of this matter. It has been hanging around for quite a while and I ski at Blue Mountain and have a season membership there, so I think I should--well, no, I had better absent myself.

Mr. Chairman: Your withdrawal is noted on the record. It will be all downhill from here on in, Mr. Callahan. That is from the book of bad lines, I suppose.

#### TORONTO SKI CLUB ACT

Consideration of Bill Pr54, An Act to revive the Toronto Ski Club.

Mr. Lipsett: Mr. Chairman, I too would like to congratulate you on your chairmanship of this committee and look forward to working with you today and in the future.

This morning I would like to introduce to you, in the interest of time and the committee, Bill Pr54, An Act to revive the Toronto Ski Club. I am pleased that this club is ready at this time to move forward and pursue its goals. This act, in my opinion, will further enhance the interest of recreation and particularly skiing in the Blue Mountain area of my riding. This club is one of the most active clubs in training of our young Canadians in racing.

At this time I would like to introduce Peter Hubbard, counsel for the Toronto Ski Club, who will speak to the details of the bill.



1100

Mr. Hubbard: Mr. Chairman, ladies and gentlemen, I am counsel to the Toronto Ski Club. By way of background, the Toronto Ski Club has been active in promoting skiing in Ontario since 1924 when it was originally incorporated. During the last 25 or 30 years, the club has operated out of the Blue Mountain area, and it presently maintains its club house and its racing and training operations at that location.

On September 8, 1982, the letters patent of the club were dissolved, cancelled as a result of the inadvertent failure of the club to file its annual returns. There was not a great stress put on management in those days; in fact, we did not have a manager for many years, and the returns did not get filed. The club's charter was cancelled, and we did not find out about it until 1986, when Blue Mountain Resorts Ltd. took certain steps to acquire the shares in its capital that were owned by Toronto Ski Club. This is under the Business Corporations Act.

When it was discovered the charter of the club had been cancelled, the public trustee then stepped in and brought an application to the court for a fair valuation of the shares, which has escheated to the trustee as a representative of the crown. Blue Mountain made some preliminary objections to that application and, in November 1986, the application was adjourned.

Matters have now been settled. Minutes of settlement have been prepared and signed. Copies have been circulated, I understand, to all members of the committee. On December 10, Mr. Justice Craig granted an order in accordance with the minutes of settlement, and all parties are now prepared to go ahead with the order and with the minutes of settlement as filed. All parties are now ready and hope to have the bill passed in its present form.

Mr. Chairman: I might just put on the record a couple of points, I hope through your answers. I understand that all court cases have been dealt with.

Mr. Hubbard: That is correct.

Mr. Chairman: Does the present bill exactly correspond with the minutes of settlement?

Mr. Hubbard: Yes, it does.

Mr. Chairman: Thank you. Is there any commentary from Mr. Haggerty on behalf of the government?

Mr. Haggerty: The companies branch has no comments or objection to the passage of the bill. Sections 2 and 3 of the bill address certain relationships between the corporation and the office of the public trustee. Any comments on those sections should be presented by the office of the public trustee.

Mr. Hubbard: Mr. Chairman, I am advised--in fact, I filed a letter this morning from Mr. De Sommer, who is corporate counsel to the public trustee, wherein he advised that the public trustee had no objection to the passage of the bill. That letter has been filed with the clerk.

Mr. Chairman: We have the letter here. I will pass out a copy of the letter and I will also read into the record what we have. The letter is

addressed to Mr. Hubbard and is dated December 11. It is from Mr. De Sommer, from the office of the public trustee, and refers to the Toronto Ski Club and to an action of the public trustee against Blue Mountain Resorts Ltd.:

"The above application having been resolved, I am pleased to advise that the public trustee will not oppose the legislation reviving the Toronto Ski Club. We have advised the legislative counsel to that effect."

Are there any questions coming from any members of the committee?

Mr. Ruprecht: Yes, just one quick one, Mr. Chairman. I used to be in the city of Toronto as a senior alderman and I recall that the Toronto Ski Club made application for funding. Is this correct? Are you recognized by the city of Toronto or did you make application for funding?

Mr. Hubbard: I am sorry, I have no information as to whether the club has made application for funding. I know that the Toronto Ski Club did at one time have its office in Toronto on Colbourne Street, but subsequently the head office has moved up to Collingwood to the Blue Mountain area, and that is where it permanently resides. I am not aware of any application having been made for funding.

Mr. Pollock: I take it the ski club owns quite a bit of property up there. Is that right?

Mr. Hubbard: The Toronto Ski Club owns a substantial portion of the Blue Mountain ski area. It has leased those lands to Blue Mountain Ski Resorts under a long-term lease, which is a 999-year lease, entered into many years ago. I do not recall the exact date.

Mr. Pollock: I take it we are not going to get a set of skis out of this, though.

Mr. Hubbard: I was going to bring skis for everybody, but I could not carry them.

Mr. Chairman: Do you have a question, Mrs. Fawcett?

Mrs. Fawcett: I am moving the question.

Mr. Chairman: You are moving the question, I am sorry. I am always happy to hear that.

There being no indication that anybody desires an amendment, all in favour of the motion, which is a motion to pass the whole bill, as printed? Opposed?

Sections 1 to 5, inclusive, agreed to.

Bill ordered to be reported.

353583 ONTARIO LTD. ACT

Consideration of Bill Pr26, An Act to revive 353583 Ontario Ltd.

Mr. Chairman: I call on Mr. Kanter to bring forward the applicants for Bill Pr26, which is to revive a numbered corporation.

Mr. Kanter: Thank you, Mr. Chairman. I am pleased to be before your



committee for the first time. I suspect it may not be the last time.

First this morning, I am here to introduce Bill Pr26, An Act to revive 353583 Ontario Ltd. With me to speak to the bill is Sidney Chertkoff, who is much more familiar with the details of the bill than I am. I will pass the details over to Mr. Chertkoff.

Mr. Chertkoff: I want to say that this problem arose in that the solicitor looking after this corporation became quite ill. He did not appear quite ill but he died in April of last year. He had it in his hands to revive this company before the five-year period was up. Unfortunately, due to the circumstances of his illness and his death, he did not.

In the meantime, the company has continued to operate actively, has filed and paid its corporate taxes and still is an active corporation. It is the sole support of an elderly man, who is the father-in-law of the deceased, and his wife and, also, is the main support of the deceased's widow and two dependent children, so the continuation of the company is most important.

There is, of course, no loss to the government nor to anyone else, and the fact is that it has lost its charter and at this point requires revival.

I do not really know what else to say at this point about it. I suppose I could answer questions.

Mr. Chairman: Are there any comments from the government?

Mr. Haggerty: In dealing with Bill Pr26, the purpose of this bill is to revive 353583 Ontario Ltd. and to restore the corporation to its legal position as at the date of its dissolution.

A certificate of incorporation of the corporation was cancelled and the corporation dissolved on March 22, 1982, due to the corporation's default in complying with the Corporations Tax Act.

The companies branch has no comment or objection to the passage of this bill.

Mr. Chairman: Are there any questions or comments from members of the committee? There not being any, is there a motion?

Mr. Sola moved the passage of the bill as printed.

Mr. Chairman: All in favour of the motion? Opposed?

Sections 1 to 3, inclusive, agreed to.

Bill ordered to be reported.

Mr. Chairman: Mr. Kanter, I guess you can hold your spot but perhaps introduce the applicants for Bill Pr8.

1110

#### CITY OF TORONTO ACT

Consideration of Bill Pr8, An Act respecting the City of Toronto.

Mr. Kanter: I hope this one goes as quickly. I would like to

introduce Patricia Foran and Alan Gordon. Pat is the deputy solicitor for the city of Toronto. Alan Gordon is a solicitor with the city of Toronto. There are other witnesses available, if required, for the various sections of the bill.

I am going to make a very brief introductory comment and then leave it in the hands of Ms. Foran. I believe that sections 1 and 2--

Mr. Chairman: Before you go on, I want to get a sense of who else is going to be speaking to the bill who is present in the room.

Mr. Kanter: Perhaps I could assist in that, Mr. Chairman. I was going to run over who was going to speak. There are staff people from the city who are available to speak to all sections of the bill if required, but there are also several private citizens who wish to speak to section 3 of the bill and, I believe, a private citizen who wishes to speak to section 4 of the bill.

Mr. Chairman: OK. Are you suggesting that we do, in effect, a discussion of sections 1 and 2 first?

Mr. Kanter: I believe you will find that sections 1 and 2 are quite routine and not contentious. Section 3 is a financial matter. There are several lawyers present who have concerns about how it might affect individual properties. Section 4 is a matter dealing with the protection of rental housing.

The government, I understand, has a position on this bill, as well as the private citizens. If you proceed with sections 1 and 2 together, I think perhaps you would find they would go quite expeditiously, and then we could deal with sections 3 and 4.

Mr. Chairman: OK. I will proceed on that basis and see how far we can go.

Ms. Foran: Section 1 deals with the parking authority of Toronto. In 1952 the Legislature gave the city the power to pass a bylaw to establish the parking authority of Toronto. The intention of the legislation, at that time, was that the city would establish this board which would consist of three members, and the board would have control over the construction, maintenance, operation and management of all municipal parking facilities in the city of Toronto.

We are here today to ask that the board be increased from three to five members. Basically, there are two reasons at this time for asking that. Over the past 35 years, the workload of the authority has increased in complexity and in volume. The council recognizes this. The members on the authority are volunteer members of the public. In order to be able to spread the workload and the responsibility the council would like to increase that membership to five.

At the same time, council has a position that it wishes to encourage increased citizen participation in the running of city hall and, therefore, to increase the board to five would open it up to two new members.

Basically, the legislation given in 1952 has worked very well and has served the city very well. All we are asking for is a technical amendment to be able to increase the board to five members from three.

Mr. Chairman: Are there any comments from the government with regard to sections 1 and 2?



Mr. Neumann: We have no comment or objection.

Mr. Chairman: I know Mr. Haggerty is not here right now and I will ask him again when he returns with respect to that section, but I am not advised that there is anything outstanding from the point of view of the ministry he is representing.

Are there any questions from members of the committee with respect to this portion of Bill Pr8? I do not propose to have a vote at this point, but perhaps we can move to section 3. As we do so, I understand that all members of the committee have received a letter from--this is for section 4?

I still want to deal with it now because there is one letter from the Ministry of Housing on section 4. There is also a letter from the law firm of Gardiner, Roberts requesting a deferral, in essence, of consideration of this matter. Then they proceed to set out lengthy factors for us to consider. I take it that all pertains to section 4.

I draw it to the attention of the committee because it has just come to my personal attention a few moments ago. I am not proposing that we defer it. My understanding from the clerk is that the proper notice in the usual way was given, and this matter has been within the realm of the Legislature for quite some time. I am not sure why the Toronto Real Estate Board may feel it did not have sufficient notice of the meeting. None the less, they have obviously had an opportunity to have something to say, at least to the solicitors who have given us the three-page letter.

That having been said, perhaps you would like to turn now to section 3, the applicants.

Ms. Foran: Section 3 deals with what we call a "sewer impost charge." In 1962, the Legislature gave the city council the power to pass bylaws imposing a sewer impost charge.

A sewer impost charge, basically, is a special charge that the city can impose on the owners of high-rise or other buildings which are being constructed or enlarged. For the building to be constructed or enlarged imposes or may impose a heavy load on the sewer or water system or both, which would require the city to spend additional money to provide the additional services, which in the opinion of council would not otherwise be required. This special charge is over and above all other rates and its purpose is to pay for the additional sewer or water capacity which results from the construction or enlargement of the building.

As I have said, the legislation imposes a charge upon the owner of the land and provides that the charge is a lien upon that land until it is paid once the building has been erected. That charge can be collected in the same manner as municipal real property taxes.

The city's bylaw was passed in 1967 under the legislation given at that time. The legislation works in this way, that when a person applies for a building permit, the commissioner of buildings looks at the building. If it is a building that is caught by the bylaw and there are only two or three exemptions to the bylaw, then the charge is imposed. The charge becomes collectable when the building has been completed.

There is provision in the existing legislation for appeals to the court of revision and then to the Ontario Municipal Board, but we are not here to

argue about the existing legislation as such. What has happened over the years is that the charge is a lien on the land. When the building is completed, we go and collect it as municipal property taxes.

Now, in so far as buildings that are considered to be row housing are concerned, when the building permit is applied for, there is one building permit and one owner; but sometimes when the building has been completed and the charge becomes payable, we find that the building has been transferred to many owners. Therefore, since the charge is a lien on the land, it applies to all of the land. In effect, in law, each person who owns a part of the row housing is responsible to pay the whole of the charge. Now that is just unfair. The reason we cannot do anything about it is that the legislation does not apply for apportionment.

All we are here today to say is that where there is a row housing project and the lien is not paid by the person who builds that project, rather than look to one specific owner to pay the whole lien, we could go to the court of revision and have the court of revision apportion the charge among all the owners. Thereafter, each individual owner would only be responsible for the portion of the charge that applies to his building.

We think that is eminently fair. It is an unfair situation that exists now, and we want to correct it. We cannot see why anybody would be objecting to it. It really is to protect the person who goes and buys a house, subject to the lien. The problem has occurred in the past where the city sends out a tax bill to an individual owner and that individual owner finds out he or she is responsible to pay for all the charge for the whole of the project. Quite a fuss develops and it is understandable. It is a ridiculous situation, but the city cannot do anything about it. This is what we are here today to ask.

Mr. Chairman: Before I move to hear from either the government or, for that matter, from the members of the committee, are there any other citizens present who want to speak to this particular issue?

Mr. Archer: On section 3?

Mr. Chairman: Yes.

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Mr. Archer: I appear as a simple citizen. I am William L. Archer. I have filed a--

Mr. Chairman: OK. If you will come forward, Mr. Kanter is kindly giving way to allow--

Mr. Archer: There is another--

Mr. Chairman: If there is anybody else who wants to speak to section 3 in particular, I would like them to come forward now so that we can hear what their position is. Perhaps the city representatives will make room--I think there are two people here--so that we can hear what everybody has to say about section 3 and then I will move to what the government may have to say and what the committee members may have in the way of comments.

Mr. Archer: Could we hear what the government is going to say before we present?

Mr. Chairman: I am inclined to hear what you have to say first.



Maybe the government will change its mind if you are very persuasive. I do not know.

Mr. Archer: I would assume they have the written document. I did not know--wonders never cease.

Mr. Chairman: Will you reintroduce yourself. I do not think it would have been picked up.

Mr. Archer: My name is William L. Archer. I appear as a citizen of Toronto who has been through the horrors of this legislation almost from the beginning.

Mr. Davis: My name is Carl Davis. I am a solicitor for Aralia Holdings. I filed a letter with the committee. I am acting for a client who is currently involved in litigation under the existing act and bylaw, and there is a concern I would like to express, after Mr. Archer has made his submissions, with respect to the effect of the amendment on that litigation.

Mr. Chairman: Perhaps we can hear from Mr. Archer first.

Mr. Archer: If I might take my text from the 1961-62 legislation--it was the section that provided for the sewer impost--it says, "This section does not apply to single-family, double or duplex buildings." There is a very clear intent in the legislation that what is considered to be a single-family, double or duplex building would not be affected by this.

The city of Toronto in its bylaw put in a provision that the 3,500 square feet of an application would not be subject to the levy. The problem has arisen that in applying for a building permit, because of zoning provisions, people would apply for, say, a high-rise building of 12 storeys and in it would include row housing. Because of the zoning provision, they had to make it a single permit. They only excluded part of that total of the 12 storeys and let us say six row houses, 3,500 square feet, so that the row housing, which I would submit might be considered to be single-family, double or duplex buildings, gets caught in the permit for the entire building.

The problem has been that the city's process on collection--as Ms. Foran has pointed out it is collected after the building has been erected and at that time the building can be sold. The sewer levy may not have been paid and, suddenly, this grand total can apply to the individual row housing. In some circumstances, tax certificates were issued without a reference to the sewer levy, which caused consternation for some 20 people who had to work out some arrangement with respect to payment of a sewer levy, ostensibly imposed on the builder of the building. That is generally the contemplation when you do a lot levy, to which this is comparable.

We have been through some horror stories. I might tell you that it has been before the Assessment Review Board which reached one decision. There have been appeals to the Divisional Court, back to the Ontario Municipal Board and a great deal of problem applying it to the row housing. My submission is that the city has not taken effective ways of correcting the system because the sewer levy, the impost levy, should probably be done so that it is clear it is not applying to a single-family house, and I think a row house in the concepts of many of us is really a single-family house in the general meaning of the term.

If they had changed their bylaw to exclude the first 35 feet in height

of a building instead of just 3,500 square feet, they would have excluded the row housing portion from it. Now they may still need the legislation that is here, but they have not effectively done this and this has been brought to their attention because the memo of May 2, 1986, which I sent to this committee I also sent to the city clerk.

My comment to you today is that, quite frankly, I think you should probably drop this section of the bill. You are not able to defer it because it is really helping the city to impose a sewer levy on row housing which ostensibly was exempted as single-family dwellings under the original legislation. The original legislation and the engineering reports stressed the fact that the high-rise building caused the additional costs on the sewer. It is not the row housing.

If I put up six row houses separately, there is no sewer levy as long as I have a building permit for each one. That is where the real problem is and I think this committee, even if it considers that it has to put this through, should give some direction to the city or make a request to the city of Toronto that it review this legislation because it is tax legislation. It is ambiguous. The system of collection is not effective. The builder does not pay and then somebody down the line gets caught with what is really a levy that should be paid by the person putting up the building as part of his construction costs.

Mr. Chairman: Mr. Archer, just so it is clear to everybody here, are you suggesting that the committee ought to pass the proposed section 3 without amendment or are you proposing that there ought to be a specific type of amendment or are you proposing that it should be defeated and the matter dealt with on another occasion?

Mr. Archer: From my position, I do not think there is any practical amendment that can be made. The problem is that if the bylaw is passed under this section, it has to go to the Ontario Municipal Board for approval. I think the real answer is for the city to do a new bylaw and go to the Ontario Municipal Board. I have reservations about holding up the particular piece of legislation--there may be some benefits from it--but I am taking this opportunity of presenting the information and showing you the problems that have arisen under the legislation up here.

If you do pass it, I ask that your committee advise the city in some form or another about the ambiguities of the bill, and my memo of May 2 is on file with your clerk. That could give a little impetus to the city to get on and correct its situation.

Mr. Chairman: OK; thank you very much. Mr. Davis.

Mr. Davis: I do not have much to add except this: Mr. Archer has laid out the kinds of problems. My client is specifically involved in litigation with respect to this issue. The issue is simply this. My client has built blocks of row houses with a number of units in them and has been given the exemption in the case of only one, rather than for the number of units in each of the blocks. If the exemption were given for each of the units in the blocks, there would be no sewer impost levied.

These units have been sold and the problem Ms. Foran described to the committee exists with these. There is a lien on all of them, on each individual parcel, for the entirety of the building--buildings. We contend they are buildings. That matter has been decided against my client at the



Ontario Municipal Board. At the court of revision it was decided favourably. At the Ontario Municipal Board it was decided against my client and we made an application for leave to appeal to Divisional Court to have the matter determined. The concern we have is that the amendment, by its language, implicitly defeats the position we are taking. In other words, it assumes that a block of town houses with various units in it is a building itself.

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The concern my client has is very specific. It does not want the litigation we are involved with to be undermined by this amendment. What I have said in my letter--I am not taking a position as to whether it should be passed--is that if it is the intention of the committee to recommend its being passed or adopted, we would ask that there be some proviso so that the litigation that is outstanding not be compromised or prejudiced against the interests of my client.

Mr. Chairman: I might observe that there is no express provision contained in this act that would cause it to apply retrospectively, and therefore, there is nothing expressed in the act that suggests that your case ought to be compromised.

Mr. Davis: That is right and I understand that, as a matter of law, legislation is not thought to be retrospective or retroactive unless expressly said.

Mr. Chairman: Unless it is a matter of procedure, which this is not.

Mr. Davis: I am troubled. It makes it more difficult, I think, in argument and to that extent I am asking simply for consideration with the amendment, not for the general City of Toronto Act. It is not broad. I had some discussion with legislative counsel as to how to draft such an amendment. I know that is opposed, but I would look for some kind of protection simply for this litigation. I do not know exactly what form it would take but I would like the committee to consider that as a possibility.

Mr. Chairman: Is there any comment from other government representatives?

Mr. Neumann: With regard to section 3, dealing with the apportionment among owners in a row housing building for sewer and water charges, it is our position that this particular amendment that is contemplated, section 3, an amendment to the original act, not be opposed. There may be some concerns the government has about the original act, but with respect to this amendment the city has assured government representatives that procedural steps will prevent a future occurrence of the lack of notice concerning a lien on property related to special charges for buildings imposing a heavy load on sewer and water systems.

However, with respect to this particular amendment, we do not have any official objection or concern.

Mr. Chairman: Thank you. Mr. Haggerty?

Mr. Haggerty: I have no comments.

Mr. Chairman: That would be applicable as well to sections 1 and 2, no comment from the ministry?

Are there any questions, first from Mr. Callahan?

Mr. Callahan: The standing orders--section 19 I think it is--in the House prevent us from debating an issue that is before the courts or a quasi-judicial tribunal. I recognize the fact that as the chairman has indicated, this is not retrospective, but would any action by this committee at this time be such that it would create prejudice or cause prejudice to the people who are presently before that tribunal? I do not know. I am just asking you that question, Mr. Chairman.

Mr. Chairman: There is nothing apparent to me, frankly, that I can tell. It may be there is a desire on the part of one of the litigants to have a resolution of comfort or at least a resolution of neutrality, if nothing else. But I suppose, if there is counsel here, they may want to comment, but on the question being put to me, I do not see a retrospective effect and I do not see that it necessarily impinges.

Miss Mifsud: I agree. I do not think this legislation applies retroactively and would not affect or interfere with any right that had already accrued under the old legislation. It would not affect anyone at this time.

Mr. Smith: Just to clarify, possibly, in my own mind what Mr. Archer has said. Someone who owns a unit of a row house, does he not actually become part owners of the land itself? Do they just own that unit and they do not own the land that it sits on?

What I am really saying here, what I am trying to find out--it seems to me that a person who owned the property and then built row houses or a high-rise--you have used both in your explanation here--the person who owned the land could sell it to someone else, but the people who owned the units would not necessarily be part of that transaction. I am trying to clarify it in my mind. If the person who owns the unit does not have any say in selling the property, then why should he be responsible?

Mr. Archer: Let me distinguish the way you use "unit," because that is part of what you might call the condominium phraseology. If it is a condominium and it is unit, then the unit has an ownership in the common elements. As a matter of fact, the city has resolved the problem of units in condominiums by taking an agreement from the condominium owner or the proposed condominium owner, even before he gets his declaration to register, that he agrees to pay and agrees to accept and agrees not to appeal the matter of the sewer levy, so that with respect to units, it is not a problem because the city has taken steps to protect the unit owners.

Where you have a row of town houses and the individual is buying the town house and the land in fee simple, he is getting the whole project. He gets the house and the land.

Mr. Smith: He owns everything.

Mr. Archer: He owns everything. You have the high-rise building and you have the six town houses. The six are sold to six individual owners--the house and the land--and that is what becomes subject to it. I think part of the problem is that there is no definition of what a building is in the legislation or in the bylaw. It just says "a building." In the permit, a building is the high-rise and the six town houses, for the permit application. Then the individual has his town house, his land and the lien for the whole sewer levy.



Mr. Beer: It would be very helpful to me if before going further with questions, perhaps Ms. Foran could comment on Mr. Archer's comments. I then might have some questions. I am interested in the suggestions Mr. Archer made. If I understand him correctly, one of the options that might be open to this committee would be to, I suppose, append his memorandum, even if we pass section 3, as we send it on. I am just curious. Given the date, presumably the city of Toronto in its wisdom decided that it did not need to go this way or it has some other approach or explanation. I would find that helpful at this time.

Mr. Chairman: I noted that Ms. Foran was getting anxious to continue with her comments. Perhaps you might also comment on the position of Mr. Davis's client and whether there are other comments, in view of the city, that might be made, or other amendments that might be made by this committee that would in any way impact upon the litigation either for or against the city or for or against Mr. Davis's client?

Ms. Foran: I will deal first with Mr. Archer's presentation. I think, basically, what Mr. Archer is talking about is the existing legislation, which is not really here before your committee today. What he is saying is that he no longer agrees with the way the city council passed the bylaw back in 1967. That is fine. The proper forum in which to present that argument is the city council. He has taken a view that he did put forward his objection to the city clerk. I am not sure the city council ever saw that.

I am quite willing to take back his comments to the city council to personally report on and recommend that city council either give active consideration to his comments or, at least, to seek reports from the relevant officials as to how this should be handled. Basically, he is not objecting so much to the apportionment, because I think everybody agrees that is fair; he is taking the opportunity now to attack a lot of things that he has objected to over the years. I will personally undertake to take that back to the city council. I have told Mr. Archer I would do that. I will recommend either that they deal with it or that they get the appropriate reports.

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I think you have to realize that the legislation says it is the council that determines whether or not the legislation applies. It is the council who has to authorize the money for the extra services, and therefore it is right in the council's area to determine what kind of buildings do, in fact, impose that extra burden. The council, of course, will take its decision from its commissioners--its commissioner of public works, its commissioner of planning and buildings. Maybe that is the proper forum, but certainly the forum here today is not the proper forum to discuss whether or not row housing imposes a heavy burden on the sewers; that is a decision for city council.

I will take back Mr. Archer's comments, if the committee wishes. I think they are worthy of further review. I am not attacking his comments, because I do think maybe it is time the bylaw was looked at. Any bylaw that is 20 years old should be reviewed. So I am quite happy to take them back, and I have told Mr. Archer that.

Mr. Chairman: OK. Now with respect to the matter of Mr. Davis's client?

Ms. Foran: Again I think I have to defer to the legislative counsel, who has said the legislation is not retrospective or retroactive.

Mr. Chairman: What happens if this committee passes a resolution saying something like, "Gee, we like what Mr. Archer says; we think the bylaw is undesirable in its current form," or it is unfair or anything to that effect? How does that affect the city in its litigation?

Ms. Foran: If you pass a resolution saying it is unfair--I do not see how you have the basis to say that at this time. All Mr. Archer is saying is that he thinks that council is wrong in saying that a row of town houses imposes a burden on the sewer. That is what I am trying to say. That is a decision for the council. Basically you are saying: "We agree with Mr. Archer. The council is wrong."

Mr. Chairman: I have not said that. I am saying that if the committee should happen to come to that conclusion, how does it impact on the litigation?

Ms. Foran: But that is not the subject matter, again, of the litigation. Again, I think the council, under the legislation, has been given that power to determine it. Now, if this committee says, "We think council is exercising its discretion wrongly," then I think the council may come back to the committee with other views. I think the council has reviewed this. But certainly under the existing legislation, it is in the opinion of the council, not in the opinion of any other body or group.

Mr. Chairman: Mr. Beer, do you have any questions arising out of that?

Mr. Beer: That answers my question. Thank you.

Mr. Chairman: I notice Mr. Archer is somewhat anxious as well. Do you have a comment?

Mr. Archer: I do. My suggestion would be that if the legislative committee were to request the city to review the legislation towards removing ambiguities, particularly with respect to single-family dwellings, and have its officials report and provide an opportunity for public submissions, I think that would do it. I think I would rather put it in that light than say it is undesirable.

I have to acknowledge that in 1966, when I was there, it was high-rise buildings that we were concerned with. Unfortunately, for a variety of reasons I was not present in 1967, when the legislation was reviewed, but I was deeply involved in the 1966 submissions--the Maclaren firm--and working it out. In doing so, I give credit to the person who really got the sewer levy going. When we think that feminism has just arrived, let us remember that it was Charlotte Whitton who got the sewer levy going in Ottawa.

Mr. Neumann: I would like to direct a question to the city of Toronto representatives. The difficulty the city has found itself in that prompted this particular amendment request to the original act might have been avoided had the city taken other steps. I want to ask why the city has not considered the alternative of collecting the fees from the developer at the time of the issue of the building permit or having the developer post a bond to cover the fees?

Ms. Foran: The legislation says that it is payable at the time the building has been completed, which can be two or three years down the road. Certainly if the ministry is now saying to us, "Go in and collect it at the



time the building permit is issued," we are going to put quite an onerous responsibility onto the person applying for the building permit, and I do not think that is a very fair position unless the legislation is changed.

I can take that position back to the council, too, and ask them to change the legislation, but I do know that I think the legislation was changed about four or five years ago to provide that it would be payable when the building was completed, because originally it provided that it would be payable within two years after the issuance of the building permit, or when the building was completed. At that time, the ministry staff thought that was unfair, and certainly the developers thought that was unfair, because sometimes the building did not get completed for three or four years and they had to come up with this money.

So it has been thought of. We did get it amended, I believe in 1981, to provide that it would be payable two years later, because at that time the developers were objecting to paying when the building was not completed. Now you are saying, "Collect it when you get your building permit." That really is a change in the legislation which is not before the committee today.

Mr. Neumann: I am not suggesting the government has changed its position. We have no objection to this amendment. The city has found itself in some difficulty, and we feel the amendment allows it to apportion it. I am just, by way of a question, asking why you had not considered the alternative. To clarify, I am not saying you should collect it necessarily at the time of the issue of the permit, but by bond or letter of credit, insurance collection. Most municipalities, in levying sewer charges to developers, collect them from the developers, and the developers, in effect, pass it on in the price they charge to the person purchasing the individual unit.

Mr. Chairman: But then it comes without a surprise.

Mr. Neumann: That is right.

Ms. Foran: At the same time, under the legislation, in actual fact we are not allowed to do that. It says it is collectible at a certain time. So I suppose if we now say, "Fine, when you bring in your money for a building permit, also bring in"--and we are talking about a large sum of money--

Mr. Neumann: What about a letter of credit or a bond?

Ms. Foran: That still costs. We will go back to the development industry and see what they think of it in the city of Toronto, but I think they will raise a howl. It is extra money that, at the time they are involved in getting a building permit and getting their mortgages and everything else, they do not want to have to face. But that is the other alternative if we have to do it.

Mr. Chairman: Are there any other questions from members of the committee?

Mr. Beer: If I may comment, as one who is not a lawyer and one who has not sat on a municipal council, these discussions are very interesting and fascinating and sometimes a bit complex. I would be concerned that, as a committee, we would appear to be doing things which are more properly the purview of the municipal council and I would be concerned that, in addressing some of these bills, we in effect seem to be trying to replace municipal council.

I think I understand the point Mr. Archer is making and I understand that Ms. Foran stated she would certainly bring that memorandum and that point of view back and that, in all likelihood, a bylaw which is some 20 years old ought to be reviewed. Is there some way in our own deliberations whereby that can be noted? Then we could leave it to the good judgement of the solicitors to bring that back and, if this were to go through as it is, then presumably Mr. Archer and others could then also approach the city again and have the discussion that we have had.

I am just not sure what kind of ground we are starting to--I am mixing my metaphors here--get into, cross over, whatever, if we pass an amendment and then, sort of as an addendum, direct that the municipality should now do such and so. It seems to me as a suggestion it makes a lot of sense that, probably with this amendment, they should review the bylaw, and counsel is saying that would be appropriate. But I am not sure whether some kind of specific directive from the committee would be helpful or would perhaps put us in a precedent kind of situation that we would rather not be in. Those are rambling thoughts that I have on that.

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Mr. Sola: I would just like to clear this up. The sewer levy is imposed on the builder of the building. Is that correct?

Ms. Foran: It is imposed on the owner of the land, whoever owns the land.

Mr. Sola: The owner of the land.

Ms. Foran: Whoever owns the land from time to time. That is the problem. Once the owner sells the land to individual persons, the charge still remains as a lien against the land.

Mr. Sola: I would like to know why the levy is not imposed on the original holder of the title to the land. When you change title, why would the lien change to the new holder? Why does the city allow that to happen? If you impose a levy on the original title, once it changes hands, why do you allow the lien to change hands and impose a burden on some unsuspecting individual?

Ms. Foran: I think the answer is that it is a lien on the land, not on the individual person who owns the land at the given time. So when the land changes ownership, it is like municipal taxes. It goes with the land, the same as the municipal tax. You can collect municipal taxes in that manner, so it is collectible like a tax. It is a lien not on the owner as such but on the land of that owner. It attaches to the land until it is paid. It does not matter then who is the new owner or owners. The problem is when you get new owners, severally. Does that answer the question?

Mr. Sola: It is still not clear. I am trying to mull that over.

Mr. Smith: I think what Mr. Sola is trying to get at here is that he thinks the municipality would likely be better off if it got all the debts cleared on that property before it allowed it to change hands. I think that is likely a good point to take from the city's point of view. I came up through the municipal system. I think it was good training, by the way, Mr. Callahan, and I think that is what he is trying to say. For instance, I came from a rural municipality. A drain has to be cleared off before it can change hands.



Mr. Callahan: I was not talking about you.

Mr. Smith: I know you were not, but that is beside the point. What Mr. Sola is trying to say is, why do you not clear it off before it goes into another hand? Then it is settled.

Mr. Chairman: That is normally what tax certificates are designed to do.

Mr. Sola: I am glad you are putting good words in my mouth there.

Mr. Chairman: I hope that is what you were trying to say.

Mr. Sola: That is what I am trying to say.

Ms. Foran: I think the city has done everything it can in this respect. In so far as condominiums are concerned, where you would think the real problem would be, we do not have a problem, because under the Condominium Act and the Planning Act, when a person goes to put land into a condominium, the minister or Metro imposes conditions and the city, as a condition of giving its approval, says, "Pay the sewer charge." We collect it that way.

We have done exactly what you are saying in so far as condominiums are concerned. We say, "You will not get your condominium until you pay," and that is what happens. But we do not have the same power in respect of row housing. That is why it is only in respect of row housing that we are here today saying, "Give us this power." If we had an approval process for row housing, we might not be here. I think we have tried to make the legislation work over the years, and it has worked in so far as condominiums are concerned.

Mr. McCague: You made the argument, when it was suggested by the chairman that the money be collected up front, that it costs a lot of money. If you see fit to do it in the case of a condominium, which I would think would be many more dollars in most cases, why would you not then see fit to do it for row housing?

Ms. Foran: It is at a different time in condominiums. When we collect it in condominiums, the project is built. Usually the units have been sold and they are going to put the land into condominiums. The project is complete at that stage. We do not collect it at the time the building permit is issued, as the ministry was suggesting. We collect it just before the land goes into condominiums, so the building is finished.

Mr. McCague: Before it is registered as a condominium.

Ms. Foran: Before it is registered, right. Before the draft plan is approved. So there is a significant time of two or three years.

Mr. Chairman: Thank you. Unless there are any other questions or comments from members of the committee on section 3, I would like to draw to your attention the last item on the agenda. I am going to suggest, for the sake of Mr. Carrothers and other applicants who are here for that private bill, that perhaps it would be appropriate that we take a break in dealing with Bill Pr8 and deal with Bill Pr70. I anticipate that will be relatively brief. Then we will turn to deal with Bill Pr8 again. At that point we may choose to vote on what we have heard and then proceed to deal with section 4. We may want to hear on section 4 and then vote for the whole bundle. That seems to be the will of the committee? Perhaps we will do that.

## COMMUNITY YOUTH PROGRAMS INCORPORATED ACT

Consideration of Bill Pr70, An Act to revive Community Youth Programs Incorporated.

Mr. Chairman: Mr. Carrothers, perhaps you could introduce the matter. I take it other people are coming forward.

Mr. Carrothers: Yes. Maybe we can have them come up.

I appreciate very much the committee's accommodating my schedule and the people here. Bill Pr70 is An Act to revive Community Youth Programs Incorporated, and I have with me today Norma Shepherd, the executive director of that corporation, and Ed Crighton, who is the chairman of the board.

As a brief background, Community Youth Programs Inc. provides counselling and group home services to adolescents in Oakville. It is a very useful service in the community. Unfortunately, I guess through a sort of communications breakdown with the ministry, the program did not realize that its charter had been withdrawn for lack of filing the annual returns. They have been operating for a number of years not being incorporated, and this is creating a difficulty in continuing with the programs. They have funding from the Ministry of Community and Social Services and other government ministries, and so the necessity of this bill has come forward to reinstate the corporation so that the programs can continue.

Mr. Neumann: The government has no concern with regard to this bill.

Mr. Chairman: Thank you. Members of the committee, any questions?

Mr. Ruprecht: No, but I would like to say that I am personally familiar with the fine work they are doing and I have for them personally a great sense of approval. I hope they carry on.

Bill agreed to as printed.

Bill ordered to be reported.

CITY OF TORONTO ACT  
(continued)

Consideration of Bill Pr8, An Act respecting the City of Toronto.

Mr. Chairman: We call back the applicants for Bill Pr8. What I am going to suggest, because I know some other members of the committee are going to want to move to other matters, is that we deal with the vote on sections 1, 2 and 3 first and then carry on with our discussion on section 4, or however we may deal with it. Is it agreed that I proceed that way with a motion to deal with sections 1 and 2?

Sections 1 and 2 agreed to.

1200

On section 3:

Mr. Chairman: Could someone tell me whether there is any proposal for an actual amendment to section 3? Nobody is proposing an amendment. Could I have a motion to move section 3?



Mr. Smith: Should we defer it? Can we defer section 3?

Mr. Chairman: You are asking me two different questions and there are two very different answers.

The question of whether you can is yes. On whether you should, I cannot answer that one; only the committee can determine that.

Mr. Smith moves that we defer section 3.

Mr. Beer: It seems to me from the discussion that we should not, with respect, defer section 3. In my view, I prefer that we support 3 and note that the solicitors for the city have indicated that they will bring the concerns expressed by Mr. Archer to city council. It seems to me that is the appropriate place for the discussion to take place. There are arguments why this should proceed forward, and I think perhaps the matter can be dealt with more appropriately at city council.

Mr. Chairman: Any other comments about the deferral issue? The thrust of your position would be to defeat the deferral motion.

Mr. Beer: With the greatest respect.

Mr. Chairman: All right. All in favour of deferral of section 3? Opposed? The deferral is carried.

Motion agreed to.

Mr. Chairman: I think it is win for Mr. Archer. It is deferred in this committee. It has not been disposed of yet.

Ms. Foran: Does that mean sections 1 and 2 will not go forward?

Mr. Chairman: It is not yet determined. On section 4, I would like to take things a little out of order and give the member for Brantford (Mr. Neumann) an opportunity to put forward the government position.

Mr. Beer: On a point of information, Mr. Chairman: I do not quite understand your response about sections 1 and 2. We passed those. I realize we have to come back--

Mr. Chairman: We passed them, but they are not reported to the House yet.

Mr. Beer: Right. That comes later.

Mr. Chairman: The opportunity to report it back to the House comes later.

Mr. Beer: The opportunity comes later. Yes, but I just did not think that was clear. OK.

Mr. Chairman: I do not know what the committee will do, quite frankly.

Mr. Beer: Right. As we have already seen.

Mr. Archer: My question is, when you say defer, are you deferring, if I may use a legal phrase, sine die, without a date, or are you deferring to a time?

Mr. Chairman: At this point it is sine die. The committee may choose to fix a time, because, frankly, this discussion on section 4 may not get done in time today. If you want to get notice about when it is going to come back, to the extent that I can, I will try to get that.

Mr. Archer: Do I take it that you can report a part of the bill?

Mr. Chairman: The option the committee has is to deal with the bill and cut out or add in, whatever it wants. Then whatever is approved as a total bill is either reported back to the House or we report back by not reporting it back to the House, to use the archaic language of the Legislature.

The upshot of it is that a deferral means that if the city of Toronto wants to get the matter through, as it has proposed, sections 1 and 2 will not get reported back to the House and section 4 will not get reported back to the House until section 3 is dealt with. But that decision has not yet been made. Section 4 may well be deferred or just not reached today.

I do not know whether I have helped you but I hope I have helped you.

Mr. Sola: Helped to confuse us.

On section 4:

Mr. Neumann: I would like to introduce Susan Taylor who is the co-ordinator within the Ministry of Housing of the rental housing protection program. She is here to answer any detailed questions you might have with regard to that program as it relates to this requested amendment.

I table for your consideration the letter from the deputy minister, Gardner Church, which I will read into the record. He writes: "I am writing to confirm our ministry's views on this bill. I would appreciate it if you would convey them to the cabinet committee on regulations and private bills." I believe he means this committee.

"Section 4 of the act is of concern to us. It would extend the time Toronto city council may refuse a demolition permit for residential properties from one year to three years.

"The Rental Housing Protection Act, 1986 gives council greater authority than this proposed legislation. Under the RHPA a council can refuse to permit demolition rather than simply delay it.

"The city argues that they require backup demolition controls because the RHPA is scheduled to lapse on June 30, 1988, and there is no indication yet as to what legislation, if any, will replace it.

"However, the ministry is currently reviewing the RHPA in the context of its overall housing policy initiatives. We would not favour the passage of legislation such as Pr8." I take it here he means section 4 of Bill Pr8.

"It has been the government policy in the past that private legislation should not deal with matters where the government has general legislation. There has been no change in this policy."



So our position is that we recommend that the committee delete section 4 from Bill Pr8 prior to reporting Bill Pr8. We feel that it is a matter that the government has taken a general approach on and we feel it is working. However, it is recognized that it is under review and we do not feel that this private legislation should be approved by the committee.

If you have any questions, Ms. Taylor will be able to answer them. If I may, Mr. Chairman, I would like to excuse myself at this time.

Mr. Chairman: I feel like a judge in court.

Mr. Callahan: I wanted to ask a question of the solicitor.

Mr. Ruprecht: So did I.

Mr. Chairman: Before you do, I want to point out that the applicant had the opportunity to speak to the rationale for this provision. I would like to allow that to take place now.

Mr. Callahan: There was a question about the city of Toronto being before the committee last year and actually getting it increased to 365 days. The rationale was that they would not be allowed to rip it down and turn it into parking lots, as I recall. Am I thinking of another bill?

Ms. Foran: We were before the committee in 1984 and got the 365 days. We were also before the committee last year in respect to heritage programs. We are now talking about residential programs. They are very different.

Mr. Callahan: Okay.

Mr. Ruprecht: I have another question while we are--

Mr. Chairman: Can I allow the applicant to finish her explanation?

Ms. Foran: I have not started.

Mr. Chairman: That is my point.

Ms. Foran: I think the committee needs to know the history of this section. The ministry just comes in and says no, but I do not think the history of the section, what we really want and why have been adequately explained.

In 1974, the city came before this committee and asked for legislation dealing with demolition control. At that time it was refused. We came back in 1975. This time, the ministry brought in an amendment to the Planning Act which, in effect, allowed the city to designate areas of demolition control. Where there is an area of demolition control, then the owner of residential property must apply to the council for a demolition permit and the council can either refuse the permit or grant the permit. In the case where a person has a building permit to construct a new building, the council must issue the permit.

Basically, what happened between 1976 and 1984 was that, in almost every application for a demolition permit, when the owner came forward he already had his building permit. In that case, the city had no leeway. It had to issue the demolition permit. In this way, many of the residential buildings were lost. So in 1984 we came before the committee and asked for legislation that

would say that, notwithstanding the Planning Act, where a building permit has been issued, council can refuse to issue a demolition permit for any building containing six or more dwelling units for a period of up to 365 days.

This period of 365 days was to enable the city to discuss the retention of the building with the owner to see if the building should be demolished, to see if it should be retained, to see if the city should buy the building, to see if the city should expropriate the building. We wanted a breathing time.

1210

In some cases, we have found that 365 days is just not enough and the council has asked me to come back and ask for an extension on that time, a period of up to 1,095 days. Council has said there are two reasons for this. They want to try to protect the tenants and they want to give the city sufficient time to negotiate the acquisition of the building, the expropriation of the building or the demolition. Council was very much aware of the Rental Housing Protection Act. We went back to council and gave it the opportunity to withdraw the legislation.

At that time, we looked at the Rental Housing Protection Act, and certainly there are some areas that it just does not covers. Therefore, I take some objection to the deputy minister's letter this morning, saying that it is the same thing as general legislation. There are some places where the Rental Housing Protection Act just does not cover. I will go into those. I think it is very important to know that the Rental Housing Protection Act does expire on June 30, 1988, and we have no way of knowing what is going to replace it.

We have taken one and a half years to get here with this bill, so if now we have to say we will wait until June 30 and then take one and a half more years, we still lose a lot of buildings. It takes time to get to this committee. So here we are one and a half years later hearing the ministry saying, "You have a Rental Housing Protection Act." Yes, but it expires six months from now. That is the exact problem. That is why we are here today. We are concerned at what is going to happen in June 1988.

The other problem is that there has been some uncertainty as to what the Rental Housing Protection Act does not apply to. The city has taken the position, "We will try to apply it to every building we possibly can." The Ministry of Housing staff take the position that it does not apply to any vacant building anywhere in the province. Therefore, if the Ministry of Housing staff are correct and if the courts were to hold that, then the act is almost useless. We need this legislation very badly, so we may find a real crunch if and when that Rental Housing Protection Act is challenged in the courts.

The third thing is that there are buildings exempted from the Rental Housing Protection Act. Almost every time you pick up an Ontario Gazette you see another exemption. In the city of Toronto, I think there are 17 or 18 buildings exempt now. These are the kinds of reasons why the city council felt that, notwithstanding the Rental Housing Protection Act, we still need this legislation.

If in June 1988 the replacement to the Rental Housing Protection Act is so broad that it covers everything and the City of Toronto Act is no longer required, that is very well and good, but we do not know at this stage and it is too late next June. It takes us another year to get back here before this committee with this kind of legislation again. Therefore, we are asking you not to turn it down at this stage.



Mr. Chairman: Do you have a question, Mr. Ruprecht?

Ms. Foran: Can I just continue?

Mr. Chairman: How about if we let Mr. Ruprecht's question be dealt with?

Mr. Ruprecht: It was interesting that you had said that the repercussions of this Rental Housing Protection Act, which is due to expire on June 30, 1988, would be, in your estimation, fairly grave. I had thought that the housing that was being lost before the act came into being was not that great, but your indications today are--I think I can quote you--that the number of buildings that would be lost in the city of Toronto would be fairly substantial. Am I hearing you correctly?

Ms. Foran: Yes.

Mr. Ruprecht: Is this a substantial loss of housing in the city of Toronto, or are we simply talking about only some or certain units in certain sections of the city?

Ms. Foran: We are saying that right now we have some protection under the Rental Housing Protection Act. The degree of protection is unknown because of the position the ministry has taken that the act does not apply to vacant buildings, so we have some concern right there. If the act is not replaced and automatically expires June 30, 1988, I think we will have serious problems with demolition of existing buildings. We will be back under the Planning Act and we will be back under the City of Toronto Act and then we will have the 385 days. That is why the council wants to gear up to the possibility that we may need a longer period of time. If we were sitting here today saying that we have a new act in place and that we do not need this legislation, I think the city would be very happy to withdraw it, but at this stage we do not have that assurance.

Mr. Ruprecht: You are really asking for the extension of this act. You are also asking that the time you may want for consideration be extended from one year to three years.

Ms. Foran: That is right. That is the whole purpose of this legislation. We are not asking for the 1984 legislation all over again. That is still in place; that was not repealed. It says 365 days. We are saying we would like that extended up to--we are not saying it has to be extended to 1,095 days--and give the council the right to go beyond the 385 days to a maximum of 1,095 days. It really is not a good argument that says you have the Rental Housing Protection Act. That is not sufficient. I have to admit that it is a local problem and a local issue and that it deals only with the city of Toronto. The problem is in the city of Toronto because of the almost zero vacancy rate. It is not a problem that affects the rest of the province; it is a problem that affects the city of Toronto. It is very much a local problem and we need it very badly.

Mr. Ruprecht: I have one other minor question that I think Ms Foran can address. I suppose, if I understand this correctly, that the city of Toronto has passed this unanimously or is there a great deal of commotion with the councillors on this?

Ms. Foran: I believe it was passed back in 1985. It has taken us, as I say, a year and a half, almost two years, to get to this committee. I think

I went back to the council last year and asked, "Do you wish to withdraw it in light of the ministry's position and in light of the Rental Housing Protection Act?" The unanimous result was, "No, we need that legislation." I cannot say if the legislation originally was passed unanimously. You may have been a member of council; I do not know. At the same time, when I did go back and ask whether we should withdraw it, the answer was no and that was unanimous.

Mr. Chairman: I might draw to the attention of the committee that there is already a letter, which I referred to earlier, from the solicitors for the Toronto Real Estate Board. Also present is James Hoffman from the Fair Rental Policy Organization of Ontario who will want to comment on this. In light of the time, before we hear from further people, I suggest we have a quick, five-minute recess to sort out the timetable we are facing. That might be of assistance to the committee.

Mr. Archer: Is this item likely to be deferred to another date?

Mr. Chairman: I am going to have some discussions to try to find out what we are looking at in time. That is the purpose I am suggesting the recess.

The committee recessed at 12:19 p.m.

12:26

Mr. Chairman: I have had an opportunity to speak with Mr. Hoffman. Mr. Hoffman's position is that of support for the position taken by the Toronto Real Estate Board with respect to section 4, just so that is clear on the record. He has kindly indicated that it is not necessary to make any further representations other than that.

I understand that the committee is prepared to deal further with section 4, but that there are no other questions or comments at this time from members of the committee. Is that correct? It seems to be correct.

Mr. Sola moves that section 4 be deleted.

All those in favour of the motion? All those opposed? None opposed.

Motion agreed to.

Sections 5 and 6 agreed to.

On section 3:

Mr. Chairman: Earlier there was a motion to the effect of deferring section 3. At that point it did not look like we were going to get all the way through this material today. Is there a motion with respect to section 3 from any member of the committee?

Mr. Beer: I would move that we approve--pass section 3. Do we have to move first that we withdraw the deferral motion? What is the correct procedure there?

Mr. Chairman: The motion is now to reconsider section 3.

Mr. Beer: I would move that we pass section 3; approve it.



Mr. Chairman: There is a motion to reconsider section 3. I will deal with that first and then have a separate motion.

Mr. Beer: OK.

Motion agreed to.

Mr. Chairman: We are now reconsidering section 3. Is there any further undertaking the city of Toronto might wish to make with respect to section 3?

Ms. Foran: I have heard what has been said this morning and I am taking it very seriously. I have heard what Mr. Archer has had to say. I respect what Mr. Archer had to say, primarily because he has been around the city of Toronto longer than any of us and is a former alderman and a former controller.

Therefore, I will personally undertake to take his brief this morning, as it appears in Hansard and his written brief, to the council with a recommendation from the city solicitor that the bylaw be reviewed, that if there is any unfairness it be removed, that it be done in consultation with Mr. Archer and that he be notified when the executive committee deals with it as a deputation item. That is about the fairest way I can do it. I will personally undertake to do that. I think Mr. Archer and I are old friends. We have dealt with things over the years. He knows that if I give my undertaking, he can assume I will carry it out. You can ask whether he has that opinion, but I think so.

I do not know of any other undertaking I can give. I cannot undertake to get the council to think a certain way because it does not always think the way I think, but I can at least give my recommendation.

Mr. Chairman: That is fine. Thank you. I think that is indeed all you can give. It is clear from the comments made on the record that there was some considerable concern from the points established by Mr. Archer and also the possible solution in part, as suggested by Mr. Neumann on behalf of the government, with respect to perhaps the posting of the bond. Council can certainly consider that when it reviews a copy of Hansard.

Section 3 agreed to.

Preamble agreed to.

Title agreed to.

Bill, as amended, agreed to.

Bill, as amended, ordered to be reported.

Mr. Chairman: I thank the applicants and all those making submissions. I might add also for the record that this committee, I think, made clear its intent was to express no particular comment or favouritism towards any party in any litigation, if that is of assistance.

I think that deals with everything before this committee today. I want to thank all who participated for their time and patience.

Mr. Beer: Merry Christmas.

Mr. Chairman: Merry Christmas to all and a happy new year.

The committee adjourned at 12:33 p.m.





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T-5

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

REGULATORY PROCESS

MONDAY, MARCH 21, 1988



STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

CHAIRMAN: Fleet, David (High Park-Swansea L)

VICE-CHAIRMAN: Beer, Charles (York North L)

Cleary, John C. (Cornwall L)

Fawcett, Joan M. (Northumberland L)

McCague, George R. (Simcoe West PC)

Pollock, Jim (Hastings-Peterborough PC)

Pouliot, Gilles (Lake Nipigon NDP)

Ruprecht, Tony (Parkdale L)

Smith, David W. (Lambton L)

Sola, John (Mississauga East L)

Swart, Mel (Welland-Thorold NDP)

Substitutions:

Callahan, Robert V. (Brampton South L) for Mr. Beer

Jackson, Cameron (Burlington South PC) for Mr. Pollock

Lupusella, Tony (Dovercourt L) for Mr. Ruprecht

Philip, Ed (Etobicoke-Rexdale NDP) for Mr. Swart

Stoner, Norah (Durham West L) for Mrs. Fawcett

Clerk: Manikel, Tannis

Staff:

Kaye, Philip J., Research Officer, Legislative Research Service

Dekany, Andrew C., Legal Counsel

Witnesses:

From the Ministry of the Attorney General:

Yurkow, Russell, Registrar of Regulations

Williams, Frank N., Assistant Registrar

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Monday, March 21, 1988

The committee met at 2 p.m. in room 228.

REGULATORY PROCESS

Mr. Chairman: I see a quorum and I would like us to get under way. The agenda bearing today's date is available for the committee. We have a couple of instances where we are waiting to confirm people, the Honourable Greg Sorbara being one, at the end of the two-week sitting. As well, we are trying to confirm an appearance by representatives of the Canadian Bar Association--Ontario. As we learn of changes, I will advise the committee, either directly or with the assistance of the clerk of the committee.

Today's proceeding is designed to be introductory, primarily with respect to regulations. Committee members should have received two draft reports. Those draft reports are based on work done in prior years by this committee, obviously with a different composition in each case. The draft reports are matters that should be dealt with by this committee for the purpose of reporting back to the Legislature, presumably in the first week of April. We can deal with them either at the end of today, if we have time, or on one of the other occasions during the week. I presume those draft reports are not going to be contentious in any way, but certainly members may have questions, and we can deal with them as is appropriate.

In addition, we have today three individuals who can provide some information and assistance to the committee. Andrew Dekany is the counsel to the committee. He is sitting on my left. In addition, we have, sitting directly across from me, Russell Yurkow, who is the registrar of regulations. Sitting to his left and my right, straight across, is Frank Williams, who is the assistant registrar.

What I anticipate proceeding with at this stage is having Mr. Dekany deal with the process of regulation. We would have, at whatever time is convenient to Mr. Dekany, an opportunity for Mr. Yurkow and Mr. Williams to indicate how they handle regulations, what the process is, and also to answer any questions.

I also add, for those of you who have not been on this committee before, that sitting two spots to my left is Philip Kaye from the legislative research service. He provides a lot of our research. You will have in front of you some memoranda from him. I think some of this material is new. I think he has some response from Quebec as well. We had made inquiries to Quebec to have some representatives of its experience come here. They were not available, but it appears we do have some written material from them. Subject to any questions any committee members may have, I propose to turn it over to Mr. Dekany.

Mr. Dekany: For the assistance of the members, you have a great deal of paper information in front of you. There are a few pieces of paper you might want to have immediately in front of you as we go through this presentation and Mr. Yurkow's and Mr. Williams's presentation. The first



should be the topics for discussion on regulatory reform, the list of questions which have been developed by Mr. Kaye and Ms. Manikel. In particular, the third page of that, which has questions dealing with the form of regulations, should be in front of you because those are particular questions Mr. Yurkow and Mr. Williams can assist the committee with.

As well, in the materials that have been handed out there is the text of an introduction to the work of the standing committee, which I drafted for a previous committee back in 1986. If you have that, it is a six-page paper which would also be useful to you. It is entitled Introduction to the Work of the Standing Committee on Regulations and Private Bills (Dealing Only With Regulations), by Andrew C. Dekany, counsel to the committee, June 23, 1986.

Mr. Philip: I do not think we have that.

Mr. Callahan: We do not have that.

Mr. Chairman: I know that has been handed out previously. I do not know if we have spare copies here. That is something all regular members of the committee would have for sure.

Mr. Callahan: Are you saying we are irregular?

Mr. Chairman: In the case of the honourable member for Brampton South, absolutely.

Mr. Callahan: One more complaint. I thought my good friend Mr. Philip would do that, not you.

Mr. Philip: I am glad to see you work by consensus as well.

Mr. Chairman: Actually, you may have received that. It was sent out January 13, 1988, but you may well be familiar with it in your capacity as a former chairman of this committee.

Mr. Callahan: Do not count on it.

Mr. Chairman: Tannis, is it possible to get copies?

Mr. Philip: While you are looking for that, do I take it from looking at the agenda that the agenda is in two distinct components in that someone who is on the committee for only one week could participate and end up participating in whatever conclusions you come to without necessarily having to be here for the second week? Is that a correct assessment? I am substituting for this week only.

Mr. Chairman: One of the things I had encouraged was to try to have people available for two straight weeks. I do not think that is going to happen. There is some time available in the first week when we will have an opportunity to try to come to a consensus about the views we may have. I doubt very much if we are going to come to a final conclusion on all these issues at the end of even two weeks. I think it is going to go into April anyway, and I hope that within this committee and, as well, within each party there will be some discussion among those who are participating.

As chairman, I am open to doing it different ways, whatever is going to be practical, to deal with the realities of our life here where we are

shuffling from one committee to another, but my sense of it is that we will be able to have some discussion as we go along. I think that is certainly more meaningful, so we can talk about what we have heard in the last couple of days as we go along.

We deliberately tried to have at least a little bit of time available for that purpose. As it turns out, the speed with which some of the requested witnesses are replying helps in that regard.

Mrs. Stoner: I have a copy of the introduction to the standing committee, but I do not have a copy of the questions, notes and comments, etc.

Mr. Chairman: We will try to dig up extra copies of that. The clerk is looking through things quickly now.

In terms of other materials, I would ask members who are not the usual members of the committee to inquire of whomever they are substituting for to see if they can get not only the information we are talking about now, but there is quite a pile, about five or six inches thick, of material that covers background, which we gave out starting in November.

Mr. Callahan: I notice the two confidential draft regulation reports. In recognition of that, are we to have Hansard?

Mr. Chairman: When we deal with the reports, we can deal with them as we want. We can do it in camera or not. I was not proposing necessarily to deal with them today, but if we decide we want to deal with them, we can.

Mr. Dekany: The key statute which we deal with is the Regulations Act. Whatever is defined in that act as a regulation is the subject of this committee's scrutiny. "Regulation" is defined quite broadly. It means a regulation, rule, order or bylaw. The key words are "of a legislative nature made or approved under an act of the Legislature by the Lieutenant Governor in Council, a minister of the crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council."

There are a few specific exceptions which are carved out of this definition which you need not worry about at this time, but it will be one of the matters we will be taking up later in the course of the hearings.

How is a regulation made? You could think of the process as occurring in various stages. I think Mr. Yurkow and Mr. Williams can address and give you some actual input as to how, practically, the regulation gets made from the start, that is, when the program administrators develop a particular policy, to the time that it gets to the very last step, which is filing of the regulation with the office of the registrar of regulations.

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Mr. Yurkow, can you discuss and perhaps advise the committee what are the various stages that the regulation-making process goes through?

Mr. Yurkow: There are various ways of making a regulation. They can be made by a body such as Hydro or conservation authorities. Where an act authorizes a particular body to make a regulation, that body can make a



regulation. The other way is the regulation can be made by the minister or by the minister subject to the Lieutenant Governor in Council.

The vast majority of regulations are made by the Lieutenant Governor in Council. They all originate the same way in that the ministry or the body making the regulation usually sends it to our office. There are a few exceptions such as some of the environmental assessment orders where the ministry processes them and they do not go through our office, but those are the exceptions.

Usually, the ministry decides on the policy. It either drafts a regulation or has some instructions. Counsel in our office receives the instructions or the draft with the ministry. Generally, we are looking to see if the regulation or if it is an amendment to a regulation does what the ministry thinks it does and whether it addresses the problem the ministry thinks it has.

We also check at that time the authority to make the regulation and we look at basically the same sort of guidelines that this committee looks at later on, the clarity of it and the infringement on rights. Basically, your guidelines are also our guidelines.

Once it has been prepared by our office, if it is a regulation that goes to the Lieutenant Governor in Council, it is then sent to regulations committee of cabinet for a screening. Simply because it has gone through our office does not necessarily mean we are happy with it. It is still the ministry's regulation. Our function under the Regulations Act is to assist in the preparation of regulations. We neither initiate it nor do we veto.

When it goes to regulations committee of cabinet, we appear at that committee as counsel to a committee. Members could be solicited or there could be administrators from the ministry who appear before that committee to present their case for the regulation. We will offer our input to the cabinet committee if we feel there is a problem with the authority, or if we see any other problems, we will draw that to the attention of that committee.

The regulations committee of cabinet then passes the regulation on to cabinet with a recommendation. The regulations that do not go to cabinet, ones that are made by the minister, still go through our office. Planning orders are the name of these. They still go through our office. They go through a procedure and we then send them back to the ministry. The next that we see of the regulation is when it is filed. If it has gone to the Lieutenant Governor in Council, there is an order making the regulation; or if it is a regulation made by the minister, it is signed by the minister and it comes into our office for filing.

The Regulations Act says the regulation comes into effect on the date it is filed, unless it specifically states otherwise in the regulation. We have a duty under the Regulations Act to publish the regulation in the Ontario Gazette within 30 days after it is filed.

Having given that, if there are any questions, I would be happy to elaborate.

Mr. Callahan: With regard to the regulation that comes to you signed by the minister, is that under an act where it would say the minister may make

regulations as opposed to the act that says regulations may be made by the Lieutenant Governor in Council?

Mr. Yurkow: That is correct.

Mr. Callahan: Does the act under which the boards and commissions--the conservation authority--operate say that the conservation authority may make a regulation or does it say the Lieutenant Governor in Council may make a regulation?

Mr. Yurkow: No. It says the authority may make a regulation subject to the approval of the Lieutenant Governor in Council. Those regulations made by the authority still go to the regulations committee of cabinet because they require the approval of the Lieutenant Governor in Council.

Mr. Callahan: So the only exceptions are certain acts where a minister may--and you have said environmental is the basic one.

Mr. Yurkow: Those, and the Planning Act.

Mr. Williams: There are various orders of the minister under the Planning Act. There is the Forest Fires Prevention Act. There are regulations that are made every summer by the minister that come in, really, on an emergency basis where it is establishing a fire zone. That does not go to cabinet because of the emergency nature of it.

Mr. Callahan: But, again, the authority for the minister doing that is specifically--

Mr. Yurkow: That is correct, yes.

Mr. Smith: I want to know how long it normally takes to get a regulation changed. The one I am thinking about in particular is the Ministry of the Environment and it was over a water line in my own municipality or constituency. It was challenged, and they have to change a regulation in order to, shall we say, get around the law or something; I do not know. The water line is in the ground now, but the objection was made, the objection was upheld and then it went to the Supreme Court. I think that is the procedure it underwent.

We are trying to get a regulation changed through the Ministry of the Environment. I just wonder how long it has to take, or can you speed it up? Can it happen inside of two or three months or is it going to take a year regardless of what--

Mr. Yurkow: If the ministry wants to and is clear on the policy, generally, once we get a regulation with firm instructions, we can get it back to the ministry within a day or two. Then it depends on when regulations committee sits. Usually, it sits every week but it does not always.

For example, if we got a regulation in on a Monday, the policy was set and there were no problems we had to go back to the ministry to discuss, we could have it back to the ministry by Wednesday via a sealed copy. When we are satisfied with the regulation and are satisfied there is authority to make it, we imprint the registrar's seal on it, which is to signal to cabinet that we are happy with it.



So we could have a sealed copy back to the ministry by Wednesday. It could forward it on to the secretary of the cabinet committee on regulations for Thursday. That committee currently sits on Tuesdays and cabinet sits on Wednesdays; so it goes through the committee on the following Tuesday and cabinet on Wednesday morning. They would get the order in council back on Thursday and they would file it in our office on Friday.

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Mr. Smith: Two weeks?

Mr. Yurkow: Two weeks.

Mr. Smith: Then it has to be advertised for--

Mr. Yurkow: It is in force; it is in effect upon filing. You cannot charge anyone under that regulation until he has notice of it, which means he is either served with notice or it is published in the Gazette.

Mr. Smith: If all the wheels were turning in the right direction and everybody was pushing forward, in two weeks you could have a regulation changed.

Mr. Yurkow: Yes.

Mr. Williams: There is even one exception to that. There are situations, I would presume, where if the minister was anxious to get something through in an emergency situation, you could get a regulation come into our office on a Monday, and if the minister was anxious to speed up the process, if it was sufficiently urgent--I think it depends on the government of the day whether it would want to go through this procedure--it could go directly to cabinet that Wednesday. In theory, you could have it through and passed within a week, but I think that would be the exception, not the general rule.

Mr. Lupusella: It is my understanding that the regulation should be published in the Ontario Gazette for 30 days, even when it is changed.

Mr. Yurkow: They always are; this is by law.

Mr. Lupusella: It can become enforceable after 30 days, but not before 30 days?

Mr. Yurkow: You cannot charge someone. For example, if there is an obligation or a prohibition in the regulation, although the regulation is in effect when it is filed, you cannot charge someone because he did not fulfil the obligation or did not comply with the prohibition until he has notice of it, and notice is publication. In some cases, I suppose, if you had a severe pollution problem or something of that nature, rather than wait for publication, you could serve them with a copy.

Mr. Lupusella: You can serve a directive.

Mr. Yurkow: Yes.

Mr. Smith: But somebody could challenge within the 30 days.

Mr. Yurkow: No.

Mr. Smith: It is just the fact that you give notice and that is it?

Mr. Yurkow: That is correct. You can challenge it at any time, as you can any law, as being outside the authority to make it or having some other legal deficiency with it, but what I am speaking of here is that if you want to charge someone, he has to have notice of the law. The provision is that he is either served with a copy or it is published in the Gazette.

Mr. Smith: That is all. You are in fact notifying the people and the public so that they are aware of the change, and that is it.

Mr. Yurkow: That is correct.

Mr. Chairman: I think Mr. Williams wants to respond. The order I have for people is Mr. Philip, Mr. Jackson and Mr. Callahan.

Mr. Williams: Although there is a 30-day time frame set out in the legislation, practically speaking that is usually two weeks. You usually find that from the day we receive the regulation that is filed in our office, there is about a two-week period between that and publication. It is really about two weeks rather than 30 days and the time frame is relatively short.

Mr. Philip: I want to get some better understanding of the nature of your comments when you obtain a regulation. One aspect is that you deal with whether it is clear or not, whether the person who is being affected can really understand what the regulation is all about, so you comment on clarity. You would comment on whether the procedures that are established are being followed in the regulation. Certain acts do establish certain procedures, do they not?

Mr. Yurkow: Yes. That is rare. Generally, that is the ministry's function. For example, a minister can make a regulation after receiving certain advice or upon publishing a certain notice or after consultation. There are a few--I cannot think of any--acts of this nature. The ministry originates. We have to assume it is following the procedures. I guess we do not have to assume it; that is its responsibility.

Mr. Philip: You would not say to a minister, "If you do this, you may be open to a lawsuit because you are not following the procedures outlined in your own act."

Mr. Yurkow: Whatever we catch of that nature, we will. Although it is not our function, counsel in our office will say, "The minister could be open to embarrassment if this goes through," or "He may catch some public flak," or whatever. We may make those types of comments. Having made them, it is not our function to carry it any further.

That largely depends on the experience of the counsel who is handling it and whether or not in our experience this sort of problem has come up and has had a bad result. We will alert the ministry in those cases.

Mr. Philip: Do I take it you would not deal with the fairness of the regulation?

Mr. Yurkow: Yes, we would. Again, we would mention that to the ministry. In that sort of case, if the ministry insisted on proceeding with it--it is the ministry's regulation--we would raise that at regulations committee of cabinet as well and at that stage cabinet could assess, hearing



our comments, whether it still wants to proceed, for whatever reasons. They could be political reasons or the minister may have made a previous commitment. They might choose to proceed notwithstanding our advice.

Mr. Philip: That kind of comment would be, "X people are going to be innocent victims of your regulation if you proceed with this"? Is that the kind of thing you are talking about?

Mr. Yurkow: That would be possible, or that there is a perceived unfairness. Where we see it, we will draw it to the ministry's attention. We will draw it to cabinet's attention.

Mr. Philip: You have talked about clarity, procedures and fairness. What other types of comments would you make? Pardon me, but I am just new at this.

Mr. Yurkow: We try to keep a consistent drafting style within the government. We look to see that the regulation fits the operation and, as we read it, the intent of the act.

To that extent, we do not look at it from a purist point of view: "Is there absolute authority to make the regulation this? Does it absolutely fit?" We look at it in this way: "Can a reasonable argument be made for saying that there is authority? Can a reasonable argument be made for saying that the legislation intended this?"

We will discuss it with the ministry. In some cases, we may advise that they amend their act if this is a program they are committed to. The big ones that we control are the authority to make it and the style.

Mr. Jackson: My questions follow on a previous line of questioning about notice provisions as well as the time frames for entertaining an amendment to the regulations on very short notice. I want to talk about a specific bill and regulation because I just finished a letter to the Minister of Health about the Nursing Homes Act, which under the regs indicates that a private licensee, if he wishes to return and surrender his licence, must do that with eight weeks' notice. We have almost run out of our eight weeks and we have a private buyer who is willing to buy. To make a long story short, I have asked the minister if she will extend that and I have asked her to take it to cabinet and to address that within the next week.

I am comfortable with your basic response in terms of how short a time frame it could happen in, but then I want to ask you about the difference between compliance, which is what the operator was doing in accordance with the regs, versus the government moving and making a change because of the regulation which gives it the authority to do that.

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In this instance, the one I am referring to, we are asking the government if it will extend the notice period. My question to you is, is it possible, given the circumstances that the operator has complied with the regulations under the Nursing Homes Act and the minister was then to do that, that she would then be required to entertain negotiations with the--

Mr. Callahan: Point of order--

Mr. Jackson: I know what your point of order is, but he may refer to legal counsel.

Mr. Callahan: On a point of order, Mr. Chairman: It is my understanding--and I stand to be corrected by those who have been here longer than I have--that when members of the civil service come before us they are not to make specific decisions about things that they may be called upon to make decisions about by a member of the government. I appreciate what Mr. Jackson is trying to do, but I think the net result of this will be just that, and it could be embarrassing to the member of the civil service if he or she gives Mr. Jackson an answer today but perhaps has to revamp that answer afterwards. I do not think that is in order. I may be wrong, but--

Mr. Chairman: I think the point of order has some validity. You may want to put hypothetical examples as opposed to a specific one that he may have to deal with. I had already made a note of things I wanted him to cover if he did not rise on the question. One of them was the issue of confidentiality. Rather than have the question restated, perhaps the response could deal with it more hypothetically. I think there are two aspects to the question, one specific and one concerning the general process that would take place. Perhaps you could deal with that, Mr. Yurkow.

Mr. Yurkow: I can deal with it hypothetically. The minister or the government cannot extend a time limit that is prescribed in the regulations without changing the regulations.

Once a regulation sets out certain procedures or time limits or time frames, the government is bound by it, as is everyone. I am not familiar with the particular case, so I think--again, speaking in generalities--one of the possible holdups that I could see is the government amending the regulation, for example, to allow an extension of time. They could not do it for one person and say this particular nursing home can have an extra amount of time. That would be discriminatory.

The government would have to decide whether it is prepared to amend the regulations to allow everyone this extended time. They may not be prepared to do so, or they may, but it may take a few weeks or a few months to work out what the consequences are. That would cause a delay.

Mr. Jackson: That is my understanding as well, but I would like to tie in Mr. Philip's question about the fairness. We had worked on this hypothetical Bill 176, and we never did discuss the whole issue of notice provision. But when we read the regulations we determined that the hypothetical returning period was eight weeks. There is general agreement, even within the hypothetical ministry that is dealing with the public inquiries, that this is insufficient notice. Is there a mechanism that is accessible and that you generate which passes comment on that or observes that as an event, or does it go unnoticed? This is not a common hypothetical event. It may happen only once in 20 years. No, I am not trying to be cute.

Mr. Chairman: No.

Mr. Jackson: No, but Mr. Philip raised a good point and I do not think anybody is in disagreement with what I am suggesting. It is not specifically directed to a specific institution. It is general. We have never had it happen in Ontario. This hypothetical situation has never occurred and it probably will not for another 20 years. But in the event that it ever did again, I think everybody is in agreement that eight weeks is insufficient time to transfer the 129 residents of this hypothetical nursing home.

Mr. Yurkow: I think what you are really dealing with is the will of



the ministry to make a change. I say "will," but there may be an inertia or there may be valid reason for not doing it. I cannot comment on that. Basically, we do not comment on a regulation until the ministry comes to us with a draft. We will not go to the ministry and say, "We have been looking over your regulations and here are a few things we think you ought to change."

Mr. Jackson: Maybe I can ask you the question another way.

Mr. Chairman: Maybe I can make a suggestion here. You are really getting into the issue of sunset provisions, I think.

Mr. Jackson: No.

Mr. Chairman: The review of the merit of the regulation.

Mr. Jackson: No. I am asking on Mr. Philip's question and comment on fairness. I am trying to find out who initiates the assessment, if you will permit me.

If I were to send, as I have in this case, a letter to the minister and if I were to send a copy to you, would there be some form of review or examination or would you dismiss it?

Mr. Yurkow: I would dismiss it. As with legislation and regulations, it is the ministry's prerogative to initiate. We have no process for initiating, no mandate to initiate.

Mr. Jackson: One final question. If I were to suggest that in my opinion the regulation should really form part of the bill and I put it in as a private member's bill, and in this framework of being in opposition it is rather meaningless, but suppose I were to do that, would you be notified of that event and would you then be called upon for comment?

Mr. Yurkow: No.

Mr. Jackson: It would only come through the ministry.

Mr. Yurkow: That is correct. I think Mr. Williams had a comment.

Mr. Williams: I have a couple of things that might help clarify the process that you are going through and maybe some others. Again, to amplify what Mr. Yurkow has said, first of all, policy is the purview of the ministry. We do not initiate policy. There is a saying in our office that we do not discuss policy unless we really have to. What we mean by that is we do not initiate it and we really cannot comment to the extent that the minister makes the policy and it is up to the lawyers for that particular ministry to come to us and say, "This is what we want to do as a ministry," but we will comment from the point of view of saying "Your scheme does not make sense" or perhaps "Have you thought about doing it this way?" or another way that perhaps would make it a little easier to administer the particular thing that the ministry wants to do and that the minister wants to do.

Other than maybe assisting the ministry in initiating that policy, we do not make the policy. That is the first thing I want to make clear.

The other two things are, Russ has alluded to the fact that normally when you make regulations, the regulations are global. They have to apply to everybody equally. There are some exceptions to that. For example, under the

Environmental Assessment Act, you can, by regulation, exempt a person or thing from a section of the act or the regulations. There are other acts that have similar provisions so that you could exempt one particular body or corporation or person from some requirement of the act or the regulation, but--and I think this is the key thing in all regulations--you cannot do something by regulation unless the statute authorizes you to do it.

It may seem like a very obvious statement but it is quite possible that somewhere along the line policy gets initiated and somebody gets the idea you can do it by regulation. When it gets to our office we say: "Hold the fort. You cannot do it, because there is no authority in the statute to do that thing." I think that is something you have to keep in mind. Likewise, a corollary from that is that you cannot amend a statute by regulation unless there is specific authority in the regulation to amend the statute. If the statute provides some kind of a time limit for revoking a licence, let us say, you could not change that time limit unless there was specific authority in the regulation-making authority of that statute to change that time limit. I do not know if that helps you with some of the things you are going through.

Mr. Callahan: Do the regulations that are signed by a minister, as opposed to going through cabinet, come to this committee?

Mr. Yurkow: They are subject to the review of this committee, yes.

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Mr. Callahan: According to the extract from the Regulations Act, "Every regulation stands permanently referred to the standing committee on regulations for the purposes of subsection 3." Are those only Lieutenant Governor in Council regulations, or does that cross--

Mr. Yurkow: No, those are all regulations.

Mr. Callahan: So we do get an opportunity then, without requesting it, to review those regulations?

Mr. Yurkow: Yes. Your counsel reviews all regulations that are filed.

Mr. Callahan: The second one was Mr. Smith and his hypothetical.

Mr. Chairman: Before you turn it around, do you have a relevant question on this?

Mr. McCague: Just this committee--you are talking about--

Mr. Callahan: Regulations. The side of regulations before the committee.

Mr. McCague: With more authority, yes. We need authority. How often have you reviewed all the regs?

Mr. Callahan: Counsel reviews the regulations, and what you get in your report at the end of the year is what he has done. Really, I gather that counsel simply reviews it in terms of making certain that it complies with the items such as retroactivity, etc. Am I am right, Mr. Dekany?

Mr. Dekany: The counsel reviews all the regulations on behalf of the committee. The review is a fairly legalistic review and many of the committee



members are not lawyers, so that is why you have hired a lawyer to do this kind of work. The work of the counsel involves reading every regulation and looking at it from a number of different perspectives.

For the committee's interest, I can distribute my checklist of what I check when I read a regulation.

Mr. Callahan: In any event, to go back to what I think Mr. McCague was getting at, we do not have any more authority than the commissioner of regulations in terms of policy. We are able to review it and make certain it fits into the guidelines as to retroactivity and so on. I think they are listed in here: retroactivity, expenditure of money and so on.

Mr. Dekany: No, the limits are really not limited to those specific guidelines. The committee, as I interpret the committee's function, cannot consider the merits at this time--

Mr. Callahan: The policy.

Mr. Dekany: --or the policy, because of the statutory limitation. I think the items in the guidelines in the House's standing orders are not the only ones we can look at. It has been on that basis that I have been examining regulations from the point of view of the charter as well. I think it would be useful to have certain other headings in those guidelines, such as the charter, but as I interpret the statute, there is no limit, as long as the committee does not get into policy or merits.

Mr. Chairman: If it is of any assistance to members, when I have made inquiries, as far as I have been able to determine, nobody ever looks at the regulations once they leave the registrar of regulations in terms of a policy discussion. This committee, other than to the extent it is reported to the committee by the counsel for the committee, never looks at the regulations. They are the least-reviewed section of law in terms of the function that we have as legislators. We just never look at it. Nobody does. Year after year, it just piles up in books.

Mr. Philip: What happens when counsel finds a problem?

Mr. Chairman: There is a process there, in effect, a discussion process that takes place between counsel and the ministry, but that does come back and--

Mr. Philip: I am talking about our counsel.

Mr. Chairman: That is right. Our counsel and the ministry will have a consultation. Mr. Dekany can go into detail, but that is what those reports are that I referred to at the beginning of today's session. They contain areas of dispute, if you like, between a ministry and counsel for the committee. The committee then makes a decision what it wants to do with it.

The whole issue of disallowance goes to the heart of that kind of a conflict. This committee conceivably would have a power to make recommendations to the Legislature that might disallow something we felt not to have proper jurisdiction. That is a power they have in Ottawa and Quebec.

Mr. Callahan: It is somewhat akin to the Ombudsman's situation where--

Mr. Philip: I think that it is the direction we are headed in, Mr. Callahan. If counsel then comes to a standstill with the ministry and there is a disagreement between a particular ministry and counsel concerning the clarity or the appropriateness or a possible violation of the Charter of Rights and Freedoms, or whatever else he seems to see in it, and he is not able to resolve that difference of opinion, does he then refer it to this committee?

Mr. Chairman: Yes.

Mr. Philip: Has that been done?

Mr. Chairman: Yes, it has been reported.

Mr. Callahan: That is what the report contains.

Mr. Philip: It is reported, but does the committee then make a decision or a comment on it?

Mr. Chairman: The committee can then report, but I can only point out that I think we have two years' worth of stuff backlogged. My understanding is that when it goes back to the Legislature, it then just disappears. Nothing ever happens.

Mr. Philip: What is the purpose of reporting if nothing happens?

Mr. Chairman: In theory, the Legislature can act on it; in practice, as far as I was able to determine, and there is no real record of this, nothing happens.

Mr. Philip: But the committee does not make a decision as to whether the counsel is right or the ministry is right or whether they are both wrong and there is some--

Mr. Chairman: Effectively, they do do that.

Mr. Dekany: The counsel is not an independent body; the counsel is the lawyer for the committee, and whatever the counsel does he is doing on behalf of the committee. There is a requirement that whenever there is a problem with the regulations, the ministry be given a chance to respond to that and set out its position.

One way you could do that is, every time the counsel finds a potential problem with the regulations, bring it before the committee, alert the committee to that and then have the chairman of the committee write to the minister involved. Because of the time constraints, this committee does not meet regularly on regulations. The procedure we have adopted is that the counsel will write to the ministry counsel alerting them to the problem. The ministry will then reply. There may be an obvious answer and that will be the end of it. However, if there is still a problem, then the counsel brings that to the attention of the committee in the report. Counsel drafts the report, but it is a report of the committee. In effect, it is the committee speaking, reporting to the House that there is a problem with this regulation.

Mr. Philip: But the committee at no time adjudicates whether you, as the committee's counsel, happen to be right or whether the ministry may have been right all along?



Mr. Dekany: The committee really listens to counsel, and it does not have to accept what counsel is saying; it is just the opinion of counsel. The committee is really not a judge. The mandate of the committee is to report its observations, opinions and recommendations.

Mr. Callahan: For instance, just to clarify, Mr. Philip, there is the difference, I suppose, from the standing committee on the Ombudsman where, in sending back that report from the Ombudsman, you are really overriding, in a sense, a decision that has been made by a ministry. It has some weight in terms of that decision and can be debated in the House.

As counsel is telling you, we are commenting on these regulations in terms of whether they are attackable on some ground and therefore trying to make certain the regulations would withstand a challenge in the courts by some erudite, high-priced lawyer.

For instance, one of the things that did come out of the earlier committee, which sat in the last session, was the question of the Charter of Rights. We are actually constituted by standing order. It did not contain a provision to review these in the light of the Charter of Rights. Counsel has been doing it, and the House was made aware that he was reviewing them on that basis, even though the standing order did not specifically spell that out.

Mr. Yurkow: Can I comment on Mr. Philip's question as to the use of the report? I know the ministries carefully read the committee reports. They have amended their legislation in several cases in response to criticisms contained in the report. You will get situations where the ministry lawyers do not agree with counsel for this committee, in which case nothing will be done; there is simply a disagreement.

The reports of this committee are useful to our office because we also read the reports and pick up the sort of things that counsel for the committee will likely be reporting and picking up. When a regulation comes in, we will tell the ministry: "This is the sort of thing Mr. Dekany will likely pick up and you will find in a report and your minister may find that embarrassing. Knowing that, if you still want to proceed with it, you can." Often, the ministry will decide not to go ahead or to make some changes, taking out the offending portion or portions. I think the committee's report has a weight or value beyond what you might perceive it to be.

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Mr. Chairman: The problem, in part at least, is that there is no reporting mechanism. In theory, when the report comes into the House, if the House were perhaps to proceed in ways it did once upon a time, it would read the report and vote on it in essence by passing a resolution directing a ministry to change something if it agreed; or if the House did not agree with the committee, the House might pass a resolution doing something else or might ignore it altogether. In practice, it never gets debated. There is never a discussion. There is never any focus. While the ministry may respond to it, I take it that is ad hoc and informal thing. They will make a judgement call, but nobody ever comes back and tells the committee what was done in any formal way. As I say, it is just not dealt with again.

One of the things that should also be pointed out to all members of this committee is that there may well be, and probably is frequently, a debate between the registrar and counsel for one of the ministries about, say, the authority for regulation to be made that is not picked up by the counsel for

the committee; and vice versa, there will be situations where counsel for the committee will have an opinion about the jurisdiction or the authority of a matter that the registrar may not have had any problems with. I think that is probably inevitable given the sheer number. There are hundreds of regulations every year. I think they are averaging a little under 1,000 a year.

Mr. Yurkow: That are filed.

Mr. Chairman: That are filed and not necessarily all disputed.

Mr. Yurkow: There is probably an equal number that have started and got killed in the process.

Mr. Williams: For every one that you see in your Gazette, we probably drafted two or three in addition that just never go anywhere or somehow get halted in the system or are still in the system.

Mr. Chairman: One of the difficulties of having counsel do the review is just the sheer size. Also, the fact that you have lawyers formulating opinions means they will simply pick up on different issues at times.

Mr. Callahan: I should basically add that the first time we had counsel for this committee was in the last sitting of the Legislature. Prior to that, as I recall, there had not been counsel.

Mr. Chairman: There had been counsel; it was Mr. McTavish.

Mr. Callahan: I am sorry. Yes, OK, but basically he commented on both, did he not, private bills and regulations, or just regulations?

Mr. Chairman: Just regulations.

Mr. Callahan: Could I just carry that one step further? The regulatory power is really granted to either the minister or the Lieutenant Governor by reason of the specific act of the Legislature that is passed in the House and is debated in the House.

Mr. Yurkow: That is correct.

Mr. Callahan: I suppose what Mr. Philip is saying is it is a crown prerogative to use those powers--basically it is cabinet; Lieutenant Governor in Council is cabinet--so that when the bill comes before the House, if the person is in the opposition, his argument would be with the scope of the powers that are provided for the Lieutenant Governor or cabinet to impose, and it is at that time that the objection can be taken as to the breadth or narrowness of that particular power.

Mr. Yurkow: That is correct.

Mr. Callahan: It is not a matter that traditionally or by law goes through the House each time the regulation is passed, because it is generally provided for, usually in the last clause of the bill.

Mr. Yurkow: Yes. It has to be provided for in the act.

The usual purpose of regulations is to fill in the detail. The act sets, or should set, the framework or the parameters, the structure within which a



program is going to function. The regulations then fill in the details. A large number of them are technical in nature. Also, by regulations you can fine-tune. This is the real purpose of it. You can fine-tune fairly quickly a program the Legislature has put its stamp on in general.

You have apprenticeship in trades regulations, for example. You may want to make annual changes to the curriculum of a particular trade or the number of hours to be spent in apprenticeship, that sort of thing. The Legislature, having set up a certain trade and decided that this should have recognition, status protection, whatever, the details of the courses and the time spent are left to regulation. I think the bulk of the regulations are of this nature.

Mr. Callahan: Or changing a speed limit, the designation of a Queen's or King's highway, trucking rates or anything like that that has to be done quickly.

Mr. Yurkow: Changes of fees for conservation authorities, admission to parks, that sort of thing, are also in the regulations. They affect people greatly, but whether you charge \$1.50 or \$1.60 for admission to a certain building is not something the Legislature has time to consider in detail.

Mr. Chairman: I would like to see if you could touch on a number of the issues that were set out in the topics for discussion. I am wondering, in particular, in light of the last comments, about the issue on form of regulations. As I raise this, I believe Mr. Smith is on the speaking order. If you have a question that is--

Mr. Smith: It is relatively short because this is new to me. I wonder how many books of regulations there are. Is there one for each ministry or are there many more than that?

Mr. Yurkow: No. In 1980, there were consolidated volumes. I think there were 10 volumes. Am I right, Frank? There are 958 regulations or 953 regulations set out in 10 volumes. In addition to those, annually a volume is put out which compiles all the regulations made in that year. By the end of 1990, there will be another consolidation and we will have a fresh start. There are not done by ministries. They are compiled under the act.

Mr. Callahan: That is for the benefit of those who do not read the Ontario Gazette on a continuing basis.

Mr. Yurkow: That is right.

Mr. Callahan: It is such an exciting periodical.

Mr. Smith: I asked the question because I had a constituent ask me if he could get the regulations on pensions. I had no idea how big the volume is.

Mr. Yurkow: The government bookstore has an updated, consolidated version of all the regulations with the amendments. I think they are probably within about a month of being up to date. The Ministry of Government Services produces office consolidations, which are largely of statutes and, in some cases at least, have relevant regulations at the back of the office consolidation. With regard to the pension stuff, which was fairly recently passed, I do not know whether that would be in the bookstore yet, but I am sure it will be. In a few months, I would imagine they will have an office consolidation of the Pension Benefits Act and probably the regulations.

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Mr. Smith: Can members of the public buy these books?

Mr. Yurkow: Yes, at the bookstore.

Mr. Lupusella: Do you update the regulations on a yearly basis?  
There are for sure a certain number of regulations which have died as a result of the ministerial process.

Mr. Yurkow: Yes. There is a table that is published every year which shows all the regulations found in the 1980 consolidation, plus all the regulations that have been passed since. It shows those that have expired and those that have been revoked. Going through the list, they are not all listed as expired, but the ones that are revoked are. It also shows every amendment to every regulation.

Mr. Callahan: Are the Revised Statutes of Ontario consolidated every 10 years?

Mr. Yurkow: Yes.

Mr. Chairman: The list of topics has one section on former regulations. Do you have any recommendations, suggestions or comments with respect to those items?

Mr. Yurkow: From the style point of view, in the last couple of years we have changed the style. I use bold type to indicate the changes. If you look at current regulations, particularly amending regulations, and the past ones, you will find that they are much easier to read.

As you pointed out, and I think it is pretty much accepted, 99 per cent of the public probably is not aware of the Ontario Gazette, much less reads it. I would doubt that more than five per cent of the lawyers look at it.

Mr. Chairman: I am not sure it is that high.

Mr. Callahan: Put the odd free trip in there or something.

Mr. Yurkow: It does not seem productive to spend a lot of time worrying about the format of the headings or whatever in the Gazette because no one looks at them. The few people who do are probably librarians in the large law firms that have a task of keeping their own consolidated version up. They are familiar with the style. They will adapt to almost any style. The headings do not mean much to them, but they are familiar with them anyway.

It is an area where you can spend a lot of time trying to improve, and there may well be room for improvement, but virtually no one would benefit from it, or care.

Mr. Callahan: Just one comment on that: probably the most confusing thing is that before the consolidation takes place every 10 years, you have to literally start at the first regulation, say under the motor vehicles acts, you have to look at that one, look at the next one and the next one and so on, to determine whether or not, when you get to the end of it, the regulation you have been charged with is still in place or whether it has been changed.



Mr. Yurkow: That is when you can go to the bookstore and get--

Mr. Callahan: The office consolidation of it.

Mr. Yurkow: Yes, the consolidated version of it.

Mr. Williams: That is where your index at the back of the volumes can be of some help to you as well because it will show the current regulation and it will show all the amendments to that regulation as well. It will show you in a one-page synopsis exactly the status of that particular regulation or statute as well.

Mr. Chairman: But all that does is simply list the ones you have to go and look up; you still have to go and read them all.

Mr. Yurkow: Yes, or you can pick up the current consolidated version from the bookstore.

Mr. Callahan: Can I ask another question? I asked this of the clerk. Considering that we are in the day and age of word processors and all of this other magic machinery, probably the most frustrating thing in practising law is, not only with the regulations but also with statutes, having to go through each one. You could use things like the citator and so on, but you would have to go through them to make sure they have not been changed.

Why could they not be put on word processors so that when the change takes place you instantly have the consolidation prepared?

Mr. Yurkow: It is an interesting question and I will give you the answer. Currently, all our regulations are on film, if you can believe it. When a change is made, for purposes of the consolidation, the printers actually cut and paste film. They interspace little pieces of film.

Mr. Chairman: That is unbelievably archaic.

Mr. Yurkow: It is.

Once the 1990 consolidation has been printed, we propose--right now we are investigating the cost of it--to keyboard and put it into a database. I think we are talking in the neighbourhood of \$500,000 to \$1 million, plus a significant amount of time. We are currently thinking, in the process of investigating the cost, that once the consolidation is out, we will scan the regulations on an electronic scanner because the film is not in a good enough state for a scanner to work.

Mr. Callahan: It sounds like the Dead Sea scrolls.

Mr. Yurkow: Yes.

You have to get a clean print for the scanner to work. The scanners are about 98 per cent accurate, which means that once they are scanned, you still have to proofread them and make corrections. I think we are talking about a cost of \$200 a page for the process. This is something that is going to be undertaken once the 1990 revision is in place.

Mr. Callahan: Think of what you could charge those law firms for that, though, if you did it.

Mr. Yurkow: Yes. The problem with legislation and even maintaining a database is that you cannot simply hire a secretary and say, "Here, plug in these changes." You cannot afford even a one per cent margin of error in the statutes, so it requires putting in, checking and rechecking. It is that degree of accuracy that is terribly expensive.

I agree it is coming. There is going to be an electronic database and it is about three or four years away.

Mr. Callahan: Could I just follow up on that, if you do not mind? The other aspect--this obviously does not necessarily deal with you, but it is related to it--is that when we sit on a committee that is reviewing a piece of legislation and looking at amendments, it seems to me that that same bringing us into the 21st century type of thing could be used to print out the section on one side and the amended section on the other side, so that everybody knows what they are talking about. It is the most confusing thing in the world to come into a legislative committee and be talking about an amendment when you do not even know what effect it has on the section you are amending.

Mr. Chairman: Perhaps you might assist in informing people about your capacity to do things. What kind of staff do you have and what kind of background do they have?

Mr. Yurkow: We work with three secretaries. There are, I think, 10 lawyers who work on regulations. All of the lawyers who work on regulations also work on legislation. The office is integrated with legislative counsel's office, so the same counsel who do legislation do regulations. I do legislation. Mr. Williams does legislation as well.

There is a training program outside the government, but generally we accept that you would view it as no training program outside the government. You get your training in the office. I have been with the office 15 years. Mr. Williams has had 17 years with the office. We have some staff who started within the past six months. We have that range of experience. Generally, the senior people oversee the junior people and the senior people tend to take the more complicated work.

There is one editor who is responsible for the publication, checking, doing the proof-reading and looking at the galley proofs when the regulations are published.

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Mr. Callahan: Do Canada Law Book and all these other people just take it from you and sell it?

Mr. Yurkow: Yes.

Mr. Callahan: Do you get any royalties?

Mr. Yurkow: No.

Mr. Chairman: There is no copyright.

Mr. Yurkow: There is no copyright on legislation.

Mr. Callahan: You do all the work, with three secretaries and 12



lawyers and it is paid for here, and Canada Law Book or other firms just take it and sell it to the legal profession and other people.

Mr. Chairman: Would we not be better off to hire them to do it and take a share of those profits?

Mr. Callahan: That is what I was going to say.

Mr. Yurkow: Then you do not control the quality of the work. At one time, I think Quic-Law started to put the regulations in a database, but in looking at its product, there were so many errors it just was not an acceptable product.

Mr. Callahan: I am surprised you can still see.

Mr. Chairman: As registrar, to whom are you and your office accountable, leaving aside any other duties they give you?

Mr. Yurkow: I am accountable to senior legislative counsel and he reports to the Deputy Attorney General.

Mr. Chairman: As I understand it, your function is a quasi-independent function.

Mr. Yurkow: Yes.

Mr. Chairman: Yet reporting to the government.

Mr. Yurkow: Yes. The whole office of legislative counsel is sort of a hybrid. Because legislative counsel acts as counsel to the Legislature, they should be under the Clerk, but legislative counsel and the registrar of regulations are paid by the Ministry of the Attorney General. Although technically we report to the Ministry of the Attorney General, we are physically dissociated from it and we operate as an independent body.

I guess to that extent it is not a clear-cut situation. The registrar of regulations is a little more mixed again because our function, by the regulation under the legislation, is to provide assistance to the ministry in drafting, and we act as counsel to cabinet to advise on the regulations that it is looking at. To that extent, the registrar's office serves a slightly different function from the legislative counsel's office.

The legislative counsel will also provide drafting services for the members on both sides of the House, private bills, motions to government bills. To that extent--I think Mr. Fleet raised the question of confidentiality--we are quite separate and distinct from the Ministry of the Attorney General. We will not discuss with anyone from the Attorney General's ministry any matter in our office, nor in fact even a government matter. If an inquiry came in on a government bill, we would refer the inquirer to the ministry that happened to be dealing with it.

In any case, whether it is regulations or legislation, we are separate from the Attorney General to that extent, but we are paid by the Attorney General.

Mr. Chairman: But if you, as the registrar, make a policy decision about how you will apply the function of your office--for instance you decide, "We will pay attention to the Charter of Rights," or you might decide, "We

will not," or, "We will try to impose some element of fairness of application of the regulation as part of our scrutiny," or, "We will not." Those are kinds of policy decisions about what you do. To whom do you report or with whom do you consult to make that kind of decision about how your office functions?

Mr. Yurkow: I would consult with senior legislative counsel only.

Mr. Callahan: Would that not also be a function of the House in setting the standing orders?

Mr. Chairman: They do not follow the standing orders.

Mr. Yurkow: No.

Mr. Callahan: I thought you said you follow the same guidelines as we do.

Mr. Yurkow: We do. We are not obliged to. We have adopted for our own purposes the same guidelines that your counsel or this committee has. When we discuss a regulation with a ministry, we have an eye to those guidelines.

Mr. Callahan: Which came first, the chicken or the egg? Did you give them to us and we adopted them or did we give them to you?

Mr. Yurkow: I am not sure, because I started in 1972 and that was when the first regulations committee of cabinet was three or four months old. I think it probably started three or four months before I came on the scene. I am not really sure which came first, or how long. Until regulations committee of cabinet came along, there was not that check. The ministries probably felt a greater liberty to do what they wanted to do and to disregard our advice because there was no representation or conflicting opinions offered to cabinet.

Once the regulations committee of cabinet was established and we were given the mandate of being counsel to that committee, we could raise the objections or problems that we saw with the regulations with that committee and this was a restraining influence on the ministries. Similarly, when this committee started reporting, that added another restraining influence.

Mr. Chairman: In what sense, do you have strict independence then? Would the senior legislative counsel not also be somebody who reports to the Attorney General's office?

Mr. Yurkow: Not on what we would report on. I must say there have been very few cases of the Attorney General or Deputy Attorney General even attempting to interfere. Going way back, I think I have heard of two instances when a call may have been made and the person was met with silence on the one end and that was the end of it.

Mr. Chairman: That speaks well perhaps of the practice. I guess I am wondering about the technical structure and whether you would have any opinions about whether your office ought to be an independent office, i.e. independent of the government.

Mr. Yurkow: On the one hand, as legislative counsel, there is good argument to be made for having the office independent of the government. As registrar of regulations, I am sort of torn because I act in both functions. The way we currently function in the regulations office, I think we perform a



very valuable service to the public in screening from the inside and probably do that more effectively than we could if we were outside the government.

I have talked to registrars in other jurisdictions where they do not have the same function or same clout, if you will, before regulation is made that our office does. I think we have it because we perform a useful function to the government in alerting it to potential problems. If we were outside the government, independent of the government, we would not be able to perform this function.

I can understand the arguments for our independence. On the other hand, if we were, I think the government, the general public, might lose a benefit that the office provides. The system is technically flawed, but for decades it has worked. I think it has worked extremely well.

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Mr. Philip: May I ask a supplementary, Mr. Chairman?

Mr. Chairman: With one proviso: Both Mr. Smith and Mr. Lupusella have had their hands up and I would like to deal with the topic. Do either of you have a question on the topic?

Mr. Lupusella: Yes, about economic independence.

Mr. Chairman: OK, and then Mr. Philip after that.

Mr. Lupusella: Is the Attorney General responsible for the budget for the operation of your office?

Mr. Yurkow: Yes.

Mr. Lupusella: Actually, you are dependent and independent, dependent because you depend on it for the budget and independent because the Attorney General is not interfering with the principle involved in the regulation per se.

Mr. Yurkow: That is correct.

Mr. Lupusella: If you are going to modernize, as you told us just five minutes ago, you expect the money is going to flow from the Attorney General to your office. Am I correct?

Mr. Yurkow: Yes.

Mr. Lupusella: OK.

Mr. Yurkow: Actually, I should qualify that. That would come through the Ministry of Government Services. Government Services publishes the consolidations. It publishes the legislation. Government Services will be publishing the consolidation when it comes out. The moneys are really not through the Attorney General. The publishing part is through Government Services. The staff is provided by the Attorney General.

Mr. Lupusella: The modernization aspect of the operation of your office is supposed to come from Government Services.

Mr. Yurkow: That is correct.

Mr. Chairman: The staffing part is from the Attorney General's office.

Mr. Yurkow: Yes.

Mr. Philip: Am I correct in hearing you say that if you were completely independent, you would not have the confidence and access to the individual ministry? If we were to take it into the public accounts field, in a sense you are performing the role of the internal auditor.

Mr. Yurkow: Yes, I think that is a fair statement.

Mr. Philip: Is it fair to say then that if you were completely independent, it would be hard for us to find a role for the counsel to the committee to perform such independent function?

Mr. Yurkow: No. The registrar's office, going back to whenever it was set up, was originally set up as a filing office, simply a place where the ministries could file regulations and have them published. There would be some record-keeping of what regulations were there. Initially, it was in a sense a clerical office. Then, because of its connection with legislative counsel, the office or the people got involved in advising ministries on regulations, on the style and the authority to make them. Then the next step was that they became advisers or counsel to cabinet. This is something that evolved irrespective of the law, as it was.

If we were taken outside the government, we would not be able to look at a regulation before it is made and say, "You ought to change this or that," or, "This is bad," or, "Try it this way." We would be back to being strictly a filing office sort of like the land registry office. It would not affect the function of this counsel; it is just that he would be looking then at the regulations on things that we would have caught, but which would have got through.

Mr. Smith: Mr. Yurkow, you mentioned private bills a while ago. Do you draft private bills for members?

Mr. Yurkow: Yes. Not in my function as registrar but as legislative counsel.

Mr. Smith: I guess there is an instance and maybe I should not be so specific but I do not know just how to go about this. If they want to change the status of a community centre, which was originally established by shareholders, to become a totally nonprofit organization or something like that, would we go to you to draft up that type of bill?

Mr. Yurkow: You would go to legislative counsel's office. Counsel have various responsibilities. We all have specific ministries, for example, which we work for. Some are assigned private bills and these assignments change periodically. So you would go to legislative counsel's office and you would be directed to the person who is doing that type of bill.

Mr. Smith: How long would it take to prepare such a bill?

Mr. Yurkow: If it is a fairly routine type of bill you could probably get it back in two or three days, depending on what the workload



happened to be. It may take a bit longer. If it is not complicated--

Mr. Callahan: And you have to get it before this committee in its private bill capacity.

Mr. Chairman: In respect of the length of time it currently takes to process a regulation, if there was a longer period of time of notice to the public, or if a format was adopted akin to Quebec or the Ottawa jurisdictions or something altogether different, so that took a longer period of time for a regulation to be dealt with, would there be any real impingement on the government or perhaps more specifically, any particular types of legislation that come up? With some types of legislation, I imagine it would not make any difference, and with some, maybe it does make a difference. I am wondering if you could comment on that, whether that kind of change would have a real negative impact in any way.

Mr. Yurkow: With a lot of regulations now, there is consultation between the government and the particular interest group involved. I think the last one Mr. Williams did was the travel industry regulations. In that case, I think, before a draft came into our office, the industry had their own counsel work on the regulations or on a draft.

I think in just about any controversial area, certainly in transportation regulations dealing with licensing, the government consults anyway, just as a matter of survival and politics. I do not know that having a lot of requirements in many acts serves a useful purpose to the public. I think it is very seldom that the government, in a controversial bill, keeps it secret.

Mr. Chairman: Maybe you have not seen the regulations in rent review lately.

Mr. Yurkow: OK. There are exceptions and I know there is some legislation where it is specifically provided for, but in my experience, I think in most cases there is consultation. They solicit opinions. I do not think it is exposing a breach of confidentiality to say that the regulations committee of cabinet asks the ministry in almost all cases: "Are the affected groups aware of this? Have they been consulted?"

Granted, there are cases where they may not have been and cases where they may have been and the government has gone its own direction anyway.

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Mr. Chairman: Is there any type of legislation that habitually comes before your office on an urgent basis, once a year or once every period of time?

Mr. Williams: I am not sure there is one that stands out any more than any other. I think every ministry has its fair share each year. In fact, it seems almost to go in cycles. One year it will be the Ministry of Education that is on the hot seat and the next year it will be the Ministry of Health or what have you. I am not necessarily singling out any particular one, but depending on what politically is the thing of the particular government of the day before the public, that is the issue which will come up. I do not think there is anything that is necessarily on a regular, routine basis as one emergency standing out over any other.

Mr. Chairman: I am wondering whether, for instance, it is a viable option, in your view, for this committee to consider recommending a notice provision that would obligate the government to give notice in every case, with one exception; that is, where the government felt it was an urgent matter it could proceed without giving public notice. But there would then be some sort of a provision that would require them to explain, at some subsequent time, why they proceeded without notice and have some kind of review process built in so that the matter would not go without any scrutiny at all. I am wondering if that kind of two-stage approach is a more viable option, in your view.

Mr. Yurkow: I think what happens in that case is you are going to spend a lot of time giving notice and consulting where the public is not interested. Right now--it is sort of an unrelated example, but where they introduce a bill, our office prepares 30 copies of the bill to give to the press gallery. I assume that, at some stage, there was an important bill and the press gallery people did not get copies. So now we routinely prepare 30 copies. They are put on the table upstairs where the press gallery is. I am sure, at the end of the day, the pages or whoever clean out on a regular basis hundreds of copies of bills that no one looks at.

Once you formalize this type of thing, I think it just creates an added delay, an added consultative process that in many, many cases will not be needed. Again, I think, with a few exceptions, generally the consultative process is there on important bills anyway, because usually it is in the government's interest to check with the interested groups or industry, such as the travel industry or the undertakers' industry. It is usually in their interest to check with these groups and consult with them.

Mr. Chairman: I am wondering, though, whether the public, not meaning the whole of the public but the public that is affected by a regulation, would have more to say if it felt it had an opportunity for formal input and if it were given formal notice. The press gallery may not care because it does not understand how a particular regulation or piece of legislation is going to impact on all members of society at any given point in time, just as sometimes the legislators do not know that. But I am wondering whether you are back to a chicken and an egg. If you do not tell them about it in advance, then they do not object to it because they think there is nothing they can do about it.

Mr. Yurkow: My personal opinion is that the disadvantages outweigh the advantages.

Mr. Callahan: I want to follow up on that. I notice the first time the question of notice and comment, which is what you are referring to, was recommended was back in 1983, so obviously this is not the first time that has been recommended.

The thing that frightens me is the fact that without notice and comment, I could be charged with breaching a regulation, even though it had only just been filed and no notice had ever been given. I could not be prosecuted until 30 days after it appeared in the Ontario Gazette, but I could be prosecuted for a law that I did not even know about.

Mr. Yurkow: No, you could not.

Mr. Callahan: All right.



Mr. Yurkow: You cannot be charged until it is published.

Mr. Chairman: As a practical matter, nobody knows it has been published, whether it has been 30 days or not.

Mr. Yurkow: That is correct.

Mr. Lupusella: Unless you serve notice in person. Then he can be charged before the 30 days.

Mr. Yurkow: That is correct.

Mr. Callahan: I am trying to find where the copy of the bill is that says--what part is it in? Maybe somebody can help me here.

Mr. Yurkow: There is a provision in the Regulations Act that says a regulation comes into effect--

Mr. Callahan: Upon filing.

Mr. Yurkow: --upon filing, but as a principle of law, you cannot charge someone until he has notice of it. The act goes on to say that publication in the Gazette constitutes notice.

Mr. Callahan: Does the act say that?

Mr. Yurkow: Yes.

Mr. Callahan: Specifically?

Mr. Yurkow: Yes.

Mr. Callahan: That gave me a little pause for concern, that at this very moment I may be doing something that is--

Mr. Chairman: Never.

Mr. Williams: I think it is fair to say that there are probably some instances where the government might well feel that in certain pieces of legislation it wants to provide sunset provisions or notice and comment provisions in regulations. I think there are a couple of examples of that under the Occupational Health and Safety Act. That jumps to mind. I think I would go along with what Mr. Yurkow has to say in that, for the most part, the system seems to work quite nicely the way it is now.

That is not to say that the government might not decide at some future time that the policy should be to institute notice and comment, but it seems to work quite well.

Mr. Chairman: As a corollary question to that, is it fair to say that, independent of the ministry, nobody really ever asks the question, "Should this be done by regulation?" The classic examples from the lists I have seen of how many regulations get passed every year are regulations under the Planning Act and the Parkway Belt Planning and Development Act, or an example you used earlier about conservation authorities. It does not make any darned sense at all that we go through the expensive process of regulations in order to charge another 50 cents when somebody goes into a conservation authority.

Mr. Yurkow: You have hit on a point that has been dear to our hearts for a decade or more. There is also the Niagara Escarpment Planning and Development Act, and in that we agree that this should not be part of the regulation process. Generally, under the Parkway Belt Planning and Development Act, no one knows. If you did not know that your property was specifically mentioned, you would never find it. There seems to be no benefit to the public to process it through our office, go to the expense of publication and maintain in our office a record of it.

The person who applied for it knows he applied for it. It would be of interest to a future purchaser or someone dealing with the land, and to that extent should be shown in one form or another in the relevant registry office or land titles office. They are the only people who are interested. Yes, we agree that this is something which would be a blessing and a saving to the public purse to take out of the regulations system.

Mr. Chairman: Would your office be able to provide this committee with perhaps a more detailed, written wish list from your point of view about what could be cut out?

Mr. Yurkow: We would love to.

Mr. Chairman: Obviously, the sooner we get it, the better off we are, and perhaps the better off you are. I am wondering as well whether, either then or now, you might want to comment about the issue of statutory authority for issuing regulations. The conservation authority may be one example where you issue stuff by regulation. I really wonder why we do that, or why we do not just say the conservation authority can decide how much it is going to charge to go to the park.

Mr. Yurkow: The conservation authority is a bit different because it has rules of conduct within the park. In some areas they have speed limits, they have camping requirements and prohibition of noise-making. If someone is breaking those laws, they need to be able to charge them, fine them and throw them out of the park area.

Mr. Chairman: We do not do that with bylaws, do we?

Mr. Yurkow: Yes, but we would have to provide for--

Mr. Chairman: I am just wondering why we bother to do it in what amounts to an expensive way.

Mr. Yurkow: There is a general rule that we try to look at, and this is the process that we are going through now in getting ready for the consolidation: what regulations ought to be consolidated and what regulations ought to simply be put in a schedule. Generally we are looking at it this way: if it is a public interest, then it ought to be consolidated. In the conservation authority ones you cannot identify who the users are or the people affected. It is anyone who visits that area. That person could be from anywhere in the province. To that extent it is a fairly general application and we concluded that ought to be in the consolidation.

Your planning orders--the parkway belt, the Niagara Escarpment and a few others--deal with a specific piece of land. Two people might be interested or care. Those types of things, I think, are different from the conservation authority type of regulation.



Mr. Chairman: Mr. Dekany, do you have some questions you want to raise?

Mr. Dekany: In the next few days the committee is going to be hearing testimony from counsel in other jurisdictions, specifically from Ottawa at the federal level. Also, we have a written submission from Quebec. In both of those jurisdictions there is a provision for all regulations being prepublished in draft form. The regulation cannot come into force, in the case of Quebec, until 45 days have passed from that prepublication. In the case of Ottawa, it is 30 days after prepublication.

There are certain safeguards in the case of urgent regulations or perhaps less significant regulations. That is one of the pieces of evidence the committee will be considering. Do you see any problem in Ontario's adopting a kind of prepublication of all regulations in draft with certain safeguards?

Mr. Yurkow: It slows up the process, but I think Frank had some comments he wants to make.

Mr. Williams: You are talking about saving the taxpayers' money and the waste of time, but in a lot of instances there already is an informal procedure where things do go out to the interested parties. You are doubling the cost of publishing everything here and now, so you may eliminate planning in the parkway belt but you are going to double the publication costs of just about everything else that goes through the system in a lot of cases.

Mr. Callahan: I have a supplementary. In Quebec, if they sent out notice to the interested parties and they are not happy with it, who hears their gripes or complaints? Is there a committee such as this?

Mr. Dekany: I understand that in addition to the prepublication of the draft regulation, the name of the contact at the ministry responsible for the regulation is also given. It is published in the form of a gazette and the purpose is that anyone who wants to read that gazette and look at the draft publication can then contact the ministry and give their comments to the ministry. That is one of the forms that notice and comment takes in those jurisdictions.

Mr. Callahan: Notice and comment was referred to precharter. Quebec's was done precharter.

Mr. Dekany: In both Quebec and Ottawa this just came in in 1986, in September.

Mr. Chairman: That is post-term.

Mr. Callahan: Post-term. The concern I would have is that, if you open up the avenue--and I certainly have no objection to that--to complaints about the proposed regulation, do you not then have to provide, to make it meaningful, a body that will hear and determine those objections? If you do that--and I think that is exactly what Mr. Williams is suggesting--although it may be making the process more open, it is in fact making the process much more expanded in terms of hearing time and so on. I am not suggesting that is a rationale for not having that, but certainly it is one of the things that would have to be considered.

Mr. Chairman: Do not forget that that is not going to have an impact

in terms of some judicial right somebody has, unless something in the law was not complied with. If you are supposed to have 45 days' notice and there is no notice given at all, there may be some issue, but that is not really a charter issue one way or the other. It is the political process you are into, as opposed to the judicial.

Mr. Callahan: OK, but what is the point of giving someone an opportunity to complain about a proposed regulation--and you would have to do it with all of them, supposedly. You would have to do it if you changed the King's highway from the metes and bounds description you had to a new metes and bounds description, or if you change the speed limit, the shape of the speed limit sign or the stop sign; you would have to do it with all of them, unless you had some way of eliminating those areas, because all of these affect people's right. If you change the speed limit on a road in my municipality, I may not like it. It affects my rights. Therefore, I should have notice of that. I do not know where you stop.

How does Quebec do that? Is there anything in this report that tells us how Quebec limits the application so that you do not simply keep those cards and letters coming in and nothing happening to them?

Mr. Chairman: I would recommend you read exhibit 1, which you got earlier this afternoon. It may tell us.

Mr. Callahan: Exhibit 1.

Mr. Chairman: Mr. Williams may want to respond to that and then Mr. Lupusella.

Mr. Williams: There is one thing I just want to make abundantly clear. Our office really has no strong feeling one way or the other. This is a government policy issue as to whether notice and comment goes forward or not. I reiterate what Mr. Yurkow said. Just from my own personal experience in working with the various ministries, from a practical point of view, that sort of process, for the most part, takes place in any event. From a cost point of view, I am not sure that a lot is being gained.

Mr. Lupusella: With the Quebec proposal, I have a little bit of concern because it might duplicate the process. We know for a fact that a regulation is the result of the statutory legislative process, which takes place in parliament. Most of the time, as far as I know, the legislation goes to the public for a hearing. The public has an opportunity at that stage to make comments, recommendations and so on. Most of the time these comments are reviewed by the ministry when regulations are drafted. Do you not see a duplication in that process if the Quebec scheme is going to be implemented here?

Mr. Yurkow: Yes, I think there is duplication or at least the potential for duplication. In many cases, there will be a duplication. The other problem is that, where you give notice, someone or a group complains and, as a result of their complaint, you say, "Yes, we will take out this provision and insert a radically different one." Then what do you do? You give notice again and another group which was satisfied with the old version now says, "Hey, we do not like it now." This process could conceivably go for a long time. I think it is potentially very cumbersome. Having said that, this is a policy question. It does not materially affect our office, but I think you would find in the long run that it does slow up the process and make it more cumbersome.



Mr. Chairman: I might just provide some assistance to members of the committee. First, we will try to obtain examples of the Ontario, Quebec and Canada Gazettes for comparative purposes. Second, there have been some materials provided today, but there were also some general materials provided previously that gave some explanation of what they do in Quebec. I cannot recite off the top of my head too much of the material, but at any rate you should be able to find it from either the stuff you received earlier or from the usual member of the committee. His or her pile of material should have something that explains the Quebec system, and the Ottawa one for that matter.

1550

Interjection.

Mr. Chairman: That is their response.

Mr. Callahan: They do in fact exempt a whole host of things from that process.

Mr. Chairman: That is correct.

Mr. Dekany: I expect we will also be hearing again from Ottawa that in the case of Ottawa, the regulation, when it is published, is accompanied by an explanatory note and the specific section or sections of the act under which the regulation is made are also set out in the regulations. Do you see any problems in Ontario adopting such a system?

Mr. Yurkow: I have a problem with explanatory notes. Theoretically, the regulation under this legislation should be clear enough that you should be able to read it and understand what it means. Granted, this is not always the case. If you put an explanatory note, you are saying on the one hand, "Here is the law, but in case you do not understand it, here is what it really means."

If that is contested and goes to court, what does the court look at? Does it look at the law or does it look at what you say the law is supposed to mean? It is quite possible that the drafter could have misconstrued unintentionally or there could be a slight subtlety, a difference, in both the written text and the explanatory note. Does the court now say, "We have an explanatory note here"? It creates a problem. If the instruction is for the court to disregard the explanatory note, then why use it? I think the potential for future problems is great.

In legislation, where we do have explanatory notes, those disappear with third reading. Those notes are simply for the benefit of members of the Legislature during the debate, so those are taken out.

Mr. Philip: Is there not a possible explanation for that, though, being that the courts will take into account what was said by the minister and by the Legislature at the time of the act? Therefore, the explanatory note may not be necessary because the Hansard is in fact the explanatory note.

Mr. Yurkow: The court is not supposed to.

Mr. Philip: But they have.

Mr. Yurkow: They have, yes. This is the danger. Where you have this outside material, you end up looking at the law or what is supposed to be the

law and then you are looking at what someone else said about it.

Mr. Chairman: What is dangerous about having an explanation for something that was not clear in the first place, which is what leads to the question?

Mr. Yurkow: It was not intentionally unclear. What you are in effect getting is a law or something that purports to be law, and then a ministry official in effect saying: "This is what it really means, guys. Never mind what it says. This is what we say it means."

Mr. Chairman: As a corollary to that question then, what about the issue of plain-language legislation, putting plain-language regulations?

Mr. Yurkow: That is a subject that also is dear to our hearts. There you are talking to the converted. We have been working on clearer language, plain English. I think there is no question that if you look at legislation and regulations that have been drafted recently, they are clearer than things that were done 10 or 15 years ago.

There are some limitations in the changeover process where you are amending something. To a fair extent, you are stuck with the structure or framework of what you are amending, even though we do try to change it and improve upon it. In some cases you have a very technical, difficult, complex subject matter that you just cannot put into plain, everyday language and in some cases you have a resistance from the ministries. In areas where it has been litigated, certain sections or clauses have an accepted meaning. The people in the industry involved know what it means. You come along and you say, "You can say this much more clearly." We have had this. Actually, on the notice and comment where something has been circulated to an industry, it has come to our office for drafting and we are rearranging it so this is clearer, and the objection is: "No, the ministry has seen this. If you change it, they'll think you've changed the meaning."

Mr. Chairman: Would it be worth while, though, particularly in conjunction with the notion of sunset clauses, to implement a regular review of every regulation and, I presume, every piece of legislation, if for no other purpose than to specifically write it in understandable language?

Mr. Yurkow: I just finished going through all the regulations in preparation for the consolidation. There is something like just under 1,200 regulations that we propose to consolidate. The task is just mind-boggling. I think we are talking about something in the neighbourhood of 12,000 pages of double-column print.

Mr. Chairman: That is why I am asking about a sunset provision. Usually they work on the basis that you do not do everything at once, but over a period of a set number of years you will have covered everything. I am wondering whether that would be a feasible approach.

Mr. Yurkow: In some cases, a sunset clause is useful. I guess in others, for example, the apprenticeship programs, there must be 50 or 60 regulations providing various apprenticeship programs. A lot of these have been around since 1970, 1968, 1974, and they have been unchanged. They serve their purpose. The language may be a bit convoluted, but everyone knows what they mean. There is no real purpose in putting a five-year sunset clause to them, for example. They have done the job for 15 years and they may continue to do the job for another 10 years. With that type of program, why have



someone review these on a periodic basis?

Having said that, there are, I am sure, a number of cases where it would be a useful exercise. I know that in going through regulations there are a number of regulations where you wonder, what purpose do they serve?

Part of the consolidation process is that we have identified 300 or 400 that we would propose to let die with the next consolidation, because they do not seem to have any effect. In those cases, we are now in the process, and in fact have in the last week written to the administration to say we propose to let these regulations die and not consolidate them and not schedule them, so come 1991, they will be dead. There is that weeding out process. It is not to say that you cannot usefully, in a number of cases, select regulations and put in sunset clauses and force the ministries to take another look at them.

Mr. Chairman: Would it be useful to have the consolidation take place twice as often, particularly once you get it all on computer?

Mr. Yurkow: We just started about two months ago preparing for the next one, and that will be published some time in 1991, so this gives you some idea of the nature of the undertaking.

1600

Mr. Williams: It is a mammoth undertaking. Of most jurisdictions, I think actually Ontario has probably one of the best systems for consolidating and revising its statutes and regulations. I do not know how often Ottawa does it, but it is very infrequently. When you try to find your way through a federal statute, it can be pretty difficult sometimes.

Mr. Dekany: Could we turn back to the question about prepublishing the specific section, setting out in the regulation the specific section of the act under which the regulation is made?

Mr. Yurkow: Sometimes there is difficulty. If you have a small regulation that has two sections, you could readily identify the section and the clause it is made under. If you put in a 60-section regulation, you may have six, seven, eight or 10 places that you pull your authority from. I think in those cases it does not help anyone to know or to have a list of what we considered.

The other problem is if the counsel identify the section and make a mistake, identify the wrong clause--there is authority but they did not identify it--what does that do to the regulation? Does that mean it is not valid because someone made a mistake and cited the wrong authority? At times, you get a blend of authorities. At times, we will ask the ministry what its authority is. They will say, "How about this clause," and then, "How about this clause?" They both tend to relate.

Quite often it is not clear-cut. I suppose when a regulation is made, generally the people who have an interest in it--if a body is going to challenge a regulation, its lawyer will check the authority. I do not think that publishing the authority--most people do not look in the Gazette, for example; I think we have established that. I think the main benefactor of that would be counsel for this committee.

Other than that, I doubt that you are going to get more than a handful of people who are ever going to look at the authority because they would have

to look in the Gazette. That would not appear in the consolidated version. It seems to be an unwarranted step for a very few people who would have an interest in it. If anyone does have an interest in it, he has the access to read the act and make his own determination as to whether there is authority.

Mr. Williams: I think there could be a further problem, and it is similar to the idea of publishing an explanatory note. If you had to prosecute in a court case under that particular regulation, an argument could possibly be made that supposing you either did not quote the right authority or did not have enough of the authorities quoted to provide for the particular regulation that is there when in fact there might have been some other authority to make that regulation, that regulation is not valid. If you had not cited the incorrect authority, you might have been OK and you might have been home free and been able to prosecute. So there are pitfalls involved in that as well.

Mr. Dekany: But if there were no authority, it would at least touch those cases that would come through where there is no authority for the regulation. By requiring the authority to be set out in the regulation, it would in effect screen such regulations so you would not have any going through for which there was really no authority.

Mr. Yurkow: Obviously, no one would publish a regulation and say, "We can't find the authority for it." They would refer, presumably, to a section that provides for the making of regulations. It is still up to the reader to go through that section and see if he can fit that regulation under the authority.

In most acts there are one or two regulation-making sections. The Highway Traffic Act is an exception that comes to mind; they are sprinkled all over. But that is the rare exception. I would be surprised if you found 12 people in the province who really made use of it.

Mr. Dekany: You mentioned that you have a number of guidelines which are the same as this committee's. When you screen regulations, do you consider whether the regulation complies with the Charter of Rights and Freedoms as one of your guidelines?

Mr. Yurkow: Yes, and this is something we would draw to the attention of regulations committee.

Mr. Dekany: Do you also have a guideline that says there should not be an unusual or unexpected use of delegated power?

Mr. Yurkow: Yes.

Mr. Dekany: We do not have that, actually, in the standing orders of our committee as a guideline.

Mr. Yurkow: In that case we generally follow the McRuer report. I think a lot of your guidelines come from McRuer, and this is where we basically have picked up ours.

Mr. Dekany: Except that is the one that was mentioned in McRuer which is not in our committee's guidelines. You do not know of any historical reason why it is not in our guidelines and it is in your guidelines?

Mr. Yurkow: I do not know, no.



Mr. Callahan: If I could have a supplementary on that, I notice on page 16 of the Quebec dissertation to us that they suggest, "I would only add that if your province intends to create a mechanism of legal review of proposed regulations by a government department or agency, I believe the terms of reference of the standing committee should not touch upon legal issues such as conformity with the Charter of Rights and Freedoms and with constitutional statutes." I wonder why they said that. Do we have anything to indicate why?

Mr. Chairman: It is an interesting question, but I am not sure if I want to go along in that vein right now. First, I am mindful of the time and, second, I want to make sure that we canvass all the issues that would directly affect the two witnesses we have before us.

Mr. Williams: This all relates back to what Mr. Yurkow said earlier. In a sense, our office serves a multi function. We really wear two or three different hats. We have the interest of the ministry, we have the interest of cabinet and we have the interest of the public. You are sitting there and you are doing your drafting. To a certain extent, you are taking your hat off and putting another hat on when you are looking at a regulation or a statute.

To make it even more complex, when we are doing legislation, quite often there will be counsel in our office who will be doing a private member's bill which will be dealing with the same subject which might be before the House on a government bill. There are times when we do not talk to each other, just for that reason. We keep everything we do confidential. If we are working on a government bill, it stays within the four corners of the office, with that particular drafter who is working on that piece of legislation. Likewise, with a private member's bill.

Mr. Chairman: Are there any other questions from members? Mr. Kaye, would you have any questions in particular you want to pose to the registrar and his assistant?

Mr. Kaye: The questions I would have raised have already been raised by counsel.

Mr. Chairman: That having been said, on behalf of all the members I would like to thank both of you for coming. We certainly covered a fair bit of ground. I look forward to receiving a written list of your wishes for amendments and it need not be confined, I might add, to just the issues we have covered. If you think of some other area that merits our consideration, please include it. We would be pleased to hear from you. Thank you very much.

Mr. Smith: Does the wish list have to be confidential or do you care if they are wide open?

Mr. Chairman: If they come to the committee, I suppose they are going to be dealt with like other materials, subject to the decision of the committee.

Mr. Yurkow: If we were giving it to the committee, I do not think we could ask for confidentiality.

Mr. Smith: You have no qualms with giving it out if it does become public.

Mr. Yurkow: No. I think this would simply be my expression or view of what I would like to see happen, which may or may not reflect the government's view. In fact, it has no bearing on the government's view.

Mr. Smith: That is fine.

Mr. Chairman: Thank you very much.

What I would propose we do at this point, in the light of the time, is continue in camera. We may continue only quite briefly but just long enough so that I can raise the content of the two draft reports we have. Is that agreeable? Agreed.

The committee continued in camera at 4:12 p.m.





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STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

REGULATORY PROCESS

TUESDAY, MARCH 22, 1988

Morning Sitting



STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

CHAIRMAN: Fleet, David (High Park-Swansea L)

VICE-CHAIRMAN: Beer, Charles (York North L)

Cleary, John C. (Cornwall L)

Fawcett, Joan M. (Northumberland L)

McCague, George R. (Simcoe West PC)

Pollock, Jim (Hastings-Peterborough PC)

Pouliot, Gilles (Lake Nipigon NDP)

Ruprecht, Tony (Parkdale L)

Smith, David W. (Lambton L)

Sola, John (Mississauga East L)

Swart, Mel (Welland-Thorold NDP)

Substitutions:

Callahan, Robert V. (Brampton South L) for Mr. Beer

Lupusella, Tony (Dovercourt L) for Mr. Ruprecht

Philip, Ed (Etobicoke-Rexdale NDP) for Mr. Swart

Stoner, Norah (Durham West L) for Mrs. Fawcett

Clerk: Manikel, Tannis

Staff:

Kaye, Philip J., Research Officer, Legislative Research Service

Dekany, Andrew C., Legal Counsel

Witnesses:

Campbell, Tony, Assistant Deputy Minister, Privatization and Regulatory Affairs

Thompson, Richard, Senior General Counsel, Privy Council Office

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Tuesday, March 22, 1988

The committee met at 10:07 a.m. in committee room 228.

REGULATORY PROCESS  
(continued)

Mr. Chairman: I see a quorum and I would like to get under way. Tony Campbell is sitting directly opposite me. He is the assistant deputy minister, privatization and regulatory affairs. Sitting beside him is Richard Thompson, senior general counsel, Privy Council Office. I hope I have your titles correct. I understand Mr. Campbell has a fairly tight time line. He has to be out of here in a little over an hour. What I am going to suggest is that Mr. Campbell commence and tell us everything magical about regulations in Ottawa and whatever commentary he would like to add after that. Hopefully we will still have a chance to pose questions to him.

The area Mr. Thompson will cover, I understand, will be more of the legalistic side of things. He is not limited by time to the same extent; so we will save up for him all the real tough ones.

TONY CAMPBELL

Mr. Campbell: Thank you for inviting us from Ottawa to visit my almost-native town. It is an unusual privilege for a guy who left Toronto to go to the federal bureaucracy actually to come back and be at home. You would be surprised how often you are expected as a bureaucrat in Ottawa to represent your home province and it is a funny experience for me to feel, in a sense, that I am back home and not in a foreign legislature with entirely different traditions and so on.

The chairman asked if I would talk a little bit about the regulatory process in place in Ottawa and then to see whether there are questions that might arise from just a general description of it. Perhaps in going into that, I should just give a little bit of background on how I approach it and the distinction, to the degree there is one, between Richard and myself inside the bureaucracy.

I should mention that it is quite unusual for a federal official to be in front of a parliamentary or, for that matter, a legislative, committee. I hope that it is understood that we are under instructions to discuss facts and avoid policy. There can sometimes be a fine line, but I do not think that it should be a problem because most of the policy ideas in the regulatory field that were floating around in 1984-85 have been implemented in Ottawa and they are now factual and it is a matter of decision whether they are useful.

Let me start with my own involvement. For the past five years I have been involved in regulatory issues. I began as the co-ordinator of the office of regulatory reform in Treasury Board in 1984 where we got some direct experience with the problems of deregulation, which is one form of regulatory reform, under the previous government. That led in turn to the study of regulatory program and regulatory process reform, under what was known as the Nielsen task force, when the current government came to office.



That was probably the most intensive look at regulation in a government setting in Canada and in fact in the world. It literally covered every aspect, from top to bottom, of how regulations are made and it actually looked at every regulatory program in the federal system. It was an extraordinary activity and produced a lot of fairly helpful information and over 200 recommendations, the majority of which have been implemented in the ensuing years.

Out of the recommendations of that exercise, the government designed what it called the regulatory reform strategy. I have brought some copies of a document, which is now somewhat dated but reflects something of what came out of that exercise. I will touch on some of it, even though only one part of it is directly relevant to your concerns.

There were eight elements in the regulatory reform strategy, and I will list them. The first thing was the announcement of a regulatory policy, the first time the federal government had ever announced a regulatory policy. A couple of provincial governments had previously established policies. For example, the Alberta government and at one point, I think, a Quebec government had established a general policy. Otherwise, we had defence policies, financial policies and all sorts of policies, but there had never been consideration of regulatory policy as such in Canadian experience and certainly not at the federal level.

Element one was the announcement of a regulatory policy--10 points, very general but chosen advisedly--the most important part of that policy being that the federal government decided it would not be a government of deregulation across the board; it would be a government of smarter regulation. That sounds like weasel wording, but in fact it has proven to be a useful concept, the idea being that it is not a question of regulation being bad and avoiding it; it is a matter of regulation, when it is needed, having to be done well and how do you arrive at that objective.

So the first element was the policy. The second element was the establishment of institutions to speak for that policy at the cabinet table, with the announcement of a Minister of State (Privatization and Regulatory Affairs), currently Barbara McDougall, and the creation of a small office to support that activity. That is the office I am a member of, the Office of Privatization and Regulatory Affairs.

The third element was the creation of a thing called the citizens' code for regulatory fairness, again a kind of fancy title. What does it mean? It was a really quite extraordinary experiment because it is 15 quite firm principles of what would contribute to good regulation. It is meant to be a type of code that affects regulators; a regulation of regulators was the intent of this code.

Again, it is written out in this particular document. I think most people looking at it are more surprised that it exists than that it is somewhat general in its phrasing, because it does establish a set of principles against which, for example, people who are aggrieved with a particular regulatory proposal can measure the performance of the government. It includes obligations of consultation and avoiding actions where the cost will exceed the benefits and several of the fairly important principles I think you are examining here as a committee.

The fourth element of the regulatory strategy was a set of reforms to existing regulatory programs. There are 43 of them listed here, but over the last three years the government has probably approached about 100 programs with major reforms, a really quite remarkable record of housecleaning.

The fifth element is the one that most directly affects this committee. It is called the regulatory process action plan. I am going to come back to it. I will just give the other three so you can situate where what I want to talk about fits in the overall picture.

The sixth element was regulatory agency reform, the whole question of government and Parliament's control over regulatory agencies. That is an important issue and one on which there is still a lot of work to be done.

The seventh item was distinct efforts to improve federal-provincial regulatory co-operation, again an area in which there is a lot to be done.

Finally, the eighth element is a type of catch-all. It was elements of individual program initiatives that ministers in the government would undertake themselves. In other words, all other parts of the strategy were going to be the responsibility of the minister responsible for regulatory affairs. Element eight was the issues that individual ministers were encouraged to take within their own areas of responsibility.

Those are the eight elements of the strategy; some of them are fleshed out in this book, but let me go back to the regulatory process action plan and its relevance to the questions I understand this committee is considering.

In the assessment of the federal regulatory process that was conducted in the spring of 1985, the conclusion of the working group, private and public sector representation, was that it was not accurate to speak about the federal regulatory system, because there was not one. You could find nobody in the system who could tell you what you would do from start to finish in some sort of comprehensive and comprehensible fashion. The only type of order that existed was under the Statutory Instruments Act, which established requirements for legal review. The only office which had any type of central co-ordinating capacity was the one Richard Thompson represents and you will hear lots about that.

Other than that requirement for legal review, there was no system in Ottawa and no standards, and the conclusions were pretty devastating. There was wholesale condemnation of the management of regulation in the federal government. That is point 1. Point 2: Ministers in Parliament had clearly lost any form of control over the regulatory process. Point 3, it was absolutely ludicrous, the level of chance that somebody in the public had to deal with that regulatory process. You had to be an expert. You had to be a lobby group that had full-time people in Ottawa to be able to deal with it. The deck was loaded against either direct self-help as an individual citizen or even if you were a minister or a member of Parliament. You just had no hope at all. A thousand regulations a year just cruised through, and most of the time they were under no control.

I am not saying anything that is not already in the public domain, but if you wanted to see the strength of the language used about the problems we were addressing, they are contained in a public report issued in March 1986 by Mr. Neilsen.



Those are important points to make without elaborating on them a great deal, because in deciding whether what we have now is any good, you have to measure against what we had. Let me talk a little bit about how we went about trying to solve that.

The regulatory process action plan, item 5 of the strategy, addressed those three problems. It did it in quite an intricate way, because we just kept those three concepts in mind, because they are all linked. If you have bad management, that affects the level of control of the political representatives and it affects the public. If you have bad public participation, that affects the degree of effectiveness in the other areas.

Those three things became our clear-cut objectives. We decided that the essence of the system was to sort of establish some system in the structure. Any management consultant probably would have come up with the same conclusions. The thing I find amazing now is how simple concepts you would read about in Management 100 have actually turned out to be worth while.

We set up four basic new concepts on top of the existing legal concepts in the Statutory Instruments Act. These are our systems management concepts. First, there was the introduction of compulsory annual planning and priority setting. The second point was the obligatory assessment of regulatory impacts for every regulation or regulatory proposal going through. I should maybe clarify here that we throw this word around. Most of what I am talking about is about regulations as subordinate legislation, but this process also applies to major initiatives, a statute, a policy proposal going into cabinet and eventually into the House as legislation. If it is of a regulatory nature, these rules apply.

#### 1020

The first point was planning and priority setting. The second point was compulsory impact assessment. The third point was publication, getting the information out to the public because that is the best way to ensure you are not going to lose control.

I do not know whether I should elaborate a little bit on that now. One of the real problems we found is that if you have 1,000 regulations going through the system in a year and you are structured vertically in government with departments with a great deal of expertise, how do you put ministers and parliamentarians in a position where they have any chance of challenging the technocracy? The answer is not simply to give them staff and information so that they can become experts. That is clearly not the way to do it. Instead, use the expertise in the private sector, the public, to counterbalance the information flows being put in front of cabinet. So publication was an important dimension.

The fourth concept was systematic, compulsory evaluation of all regulatory programs. Once you got a regulation in place, make sure you revisit, make it compulsory and make that information available to ministers so that there is a check. What could be more unimaginative than planning impact assessment publication and evaluation? You could even say, is it not extraordinary that it did not exist conceptually or in practice in many cases.

Each of those points was linked to the three objectives we had and produced a program. For example, we tried to take planning and ensure that it had an impact on internal management, an impact in terms of getting control and accountability to the political level and an impact on the public.

Through December now, this is the second year we have produced the federal regulatory plan. Every department puts out a brief statement of an intention it has either to initiate or complete a regulation--that is the definition we use--in the upcoming calendar year.

It has the three purposes. The first point is that we are advised of the overall picture of what is being proposed. That goes to cabinet. In principle, cabinet could cut it down. I will come back to that in a second if you are interested in just the planning concept. The first idea is just to force the bureaucracy, instead of considering the regulatory process as a free good, to actually have to sit down at the same time as it is deciding how to spend its dollars to link in what it is going to do in terms of regulation during a particular year.

It has internal management focus. The minister signs off the proposal when it comes to my minister, who presents it to cabinet. Cabinet looks at this thing and says, "That is the picture for the year," and decides whether it wants to do some cutting.

That means there is now also political control of the planning process. The way that has teeth is that second word I used, which was priority setting. In the end, what we were finding when we reviewed the regulatory process was that if everybody just assumes the control mechanism such as legal review, unlimited goods, of course, what happens is the stuff piles in and you get backlogs and lengthy delays.

If you have a recognition that it is a limited good and it is a resource that has to be allocated out, then priority setting becomes important. In principle, one third of it comes out of a department and this plan maybe will simply be thrown away, not that it is not important or desirable, but you just do not have the resources to allocate on it.

Again, I can come into this in some depth if you like because this year in 1988, we are facing a major problem because of the free trade issue and tax reform. A great flock of regulatory activity that is difficult to plan in advance will be coming through and it could easily raise the issue of what should be done. Now we have a means where that decision would be made by ministers as opposed to the way it used to be made, which was in fact in Mr. Thompson's office. The squeaky wheels tended to get the grease. There is now a process which cabinet actually controls.

The public dimension is that all of what is in this book goes public. The objective is 60 days in advance of actual action on these regulations. It is published, and in the first year we sold it for cost recovery. This year, as we experimented with the processes, we found that by the time somebody got the coupon and shipped it into the Queen's Printer and sent in the fee, one did not get early information. This year we just shipped it out free. We are finding now that we are getting close to our objective.

Mr. Callahan: To whom would you ship it out?

Mr. Campbell: There are three different lists we use. One is the standard list of the obvious people who come to mind, libraries in general. We ship them out to all provincial governments. I do not think we ship them out to provincial legislators, MLAs, but we are open to suggestions. We send them to all the parliamentarians and to all the organizations in the Canadian Almanac and Directory. We take a wide swathe.



The second list we use is one of contacts in government at the bureaucratic level, all the departments, all the federal-provincial relations people, because, underneath, one of our long-term objectives has been to encourage and hope that provinces would do the same thing. If you are the widget company in Scarborough, that is only part of the picture and the other part would be nice to have and then you would perhaps be able to work from it.

Mr. Callahan: The reason I ask that, if I can interrupt--

Mr. Chairman: I would like to have him get through his whole presentation.

Mr. Callahan: I just do not want to forget.

Mr. Chairman: I have you on the list.

Mr. Campbell: I am nearly finished.

This is the planning and it has the management, the ministerial and parliamentary dimension and the public dimension.

The next thing is impact assessment. Impact assessment is a subject you can go into at some length. In 1978, the federal government introduced a thing called socioeconomic impact assessment for all regulations on health, safety and fairness. The idea was that any regulatory proposal that might have more than a \$10-million effect on the economy would have to go through a SEIA, as they called it, a socioeconomic impact assessment.

When we did the examination of that policy in 1984, we found that in seven years there had only been 11 of these things done and what had happened, of course, bureaucrats being the same as anybody else, is they had looked for the loopholes to try to get around. Clearly, the government between 1978 and 1985 had done many more regulatory initiatives that had more than a \$10-million impact so we found a situation where there is a regulated, bureaucratic control process which was just largely ignored and not serving its purpose.

That influenced what we decided to do, which was to create the concept of RIAs. Every new regulatory proposal, be it a statute, be it an initiative of any sort or be it a regulation, must be accompanied by a regulatory impact analysis statement. Again, we had the three layers of objective: In terms of the inside the department, we wanted better analysis of what the costs and benefits of a regulation proposal might be; clear-cut identification for the purpose of ministers of who gets hurt and who wins, and then some pressure against the use of regulation by making it clear why a regulation proposal is necessary.

Then there was requirement for specifically addressing of compliance issues. Too often people would say, "Let us pass a law." A law would be passed and then people would say, "I need 8,000 people to enforce it." Then people would get into the question of, "How do we enforce what the ministers have asked us to do?"

At the point where you start thinking of a regulatory initiative, you should be thinking about enforcement. This is obvious, I guess, but we had not thought it through. Where enforcement becomes impossible, maybe you are in the wrong direction even to introduce a regulation. Cynics would say there are occasions where you will find compliance is impossible but you want to pass

the regulation for a particular effect and there are cases in the federal books of regulations that are there with no intention of enforcement but they are there for various, sometimes even desirable, purposes. One case we know of is a situation where a regulation has no legal enforcement possibility but the fact it is there has a disciplining effect on a particular market.

A simple concept is to provide information according to certain categories and attach it to every regulation that you put forward as a department, for better management of the decision-making process in a department.

Then we said, "That information should be passed to ministers so that they can see the thinking that went on and make the originating minister sign it off so that it actually has been well vetted by a department." So when a proposal comes to cabinet now, it is accompanied by this particular piece of paper.

Then to my mind the most remarkable concept was the public dimension. Do we put that information in front of the public? The answer was yes. Every week in part I or part II of the Canada Gazette, you will find regulations presented with the RIAS, as we call it, the regulatory impact analysis statement, that accompanied that document in front of ministers. It is the same information.

Occasionally, where there is sensitive information, there may be a case where information is provided that supplements the RIAS, but 98 per cent of the time, what you see in public is the document.

I just brought some copies of a recent one that just shows you exactly the format that arrives in our office from a department and the way it goes in front of the ministers.

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Mr. Chairman: I am wondering if we could have that circulated along with another document, the booklet.

Mr. Campbell: I did not know how many members to bring copies for. I think there are about 10 or 12 there.

Mr. Chairman: Are there extra copies of the regulatory plan?

Mr. Campbell: I brought only the one, but if anybody is interested, indeed if the committee is interested, we can ship a box or I can send it individually during the week. The question itself has risen in my mind, why we did not send it to every legislator in the country. We should, and I think we will.

Mr. Chairman: OK. We could use about 15 of them right off the top, if you could send them to the clerk.

Mr. Callahan: Do not send them in the mail.

Mr. Campbell: That is right. By courier.

Mr. Chairman: I think it might be appropriate as well if we make what is being distributed now by the clerk exhibits, and eventually when we get the regulatory plan for 1988 we can make that an exhibit as well.



Mr. Campbell: On planning priority setting with the three dimensions in it, impact assessment and publication, we publish both the plan and the impact assessment and in publication there is a special program. In principle, every federal regulation that is going to be proposed is going to be put out for prepublication of 30 days. That is the rule, and any exception has to be justified by the minister responsible.

Exceptions are justified on three grounds. Ground number one is emergency, ground number two is cost-benefit--if the cost of prepublication would exceed the benefit, then it should not be done--and the third is sensitivity of an economic, political or intergovernmental sort. Those are pretty broad exceptions, but they allow for a decision-making process by ministers where the weight is against the proposed exception, so there is an onus on the proposing minister for an exception.

We have found that in the first year of operation, and the first year is looking a little different from the second year--I am interested because I have seen Quebec statistics and it has an obligatory process but with exemption procedures written into its law. In our case, it is an administrative process with exemptions built into the law, and we come out with roughly similar statistics in terms of how many actually get prepublished. It runs in the order of about 40 per cent. Although the rule is 100 per cent prepublication, the reality comes down to about 40 per cent.

My own feeling is that if you prepublished everything of public significance where people would want to know about it and comment, you might come close to 50 per cent but you would not go much above that, even though your principle is prepublication.

The prepublication issue is an interesting one. Is 30 days enough? Quebec has 45 days. In some of our statutes before this general administrative policy, requirements were anything: 45, 60, 90 days. On some occasions, we will not give an exception. We will say, because of the urgency, instead of 30 days, you do not have 30 days to do this process, let us put it in for 15 days, and there is a heading in the Canada Gazette saying "15 days".

Let me go back to the principle we were trying to do here, which was the management, the ministerial control and the public. Prepublication is not simply a way of conveying information to the public, it is a discipline on the management of regulation at the start. We have had cases where the public has come back and said, "Look, that RIAS that you published with the prepublication is full of guff and the truth is such-and-such." That has a quite remarkable affect on the decision-making information process.

In terms of ministerial control, when an item has been prepublished and it comes before cabinet again, the department must identify what kind of prepublication impact reaction there was, so there is information there.

Each one of those steps--the planning priority, the impact assessment, the publication--has a direct benefit on all three levels of our objective.

I will finish off on evaluation. This relates to one of the questions the clerk of this committee had asked us to consider, and that was sunseting. The advice of the Nielsen task force was that in other jurisdictions where it has been experimented with, sunseting has not generally been successful as a general principle. Many state legislatures in the United States had famous sessions where they would meet at 10 minutes to midnight on the sunset night and pass 160 laws again, that sort of thing. I am not aware of any instance

where the concept of generalized sunseting in one fell swoop--or in some cases they divided it into three; every year a third of the laws would come up for review--has been a total success.

The Nielsen task force recommendation to the government, which was accepted, by and large, was to my mind a more sophisticated concept. First of all, while sunseting across the board is not desirable, sunseting as a concept is highly desirable in the regulatory field. It was proved, for example, by the Bank Act, which many years ago was given a 10-year sunset as a matter of principle. It is probably the main reason Canada's banking laws have been well in advance of the rest of the world over the years.

That simple concept required recognition of changing realities at regular intervals, whereas acts of great importance that deserve just as much frequency of revisitation, such as copyright and so on, have gone for 50 years without review.

The first principle then was that sunseting on an exceptions basis should be encouraged, and it should be directed at areas of framework regulation, where changing technology over time should be recognized and adjusted to. So on a selective basis, sunseting, yes, a Mackenzie King formula, but not necessarily sunseting in all cases.

Where you do not have sunseting built into either a piece of legislation or a regulation, at that point you apply principle 4 of our regulatory process, which is evaluation. The rule is that every federal regulatory program--

Mr. Chairman: Before you go on, can you just expand a little bit about what means you have in Ottawa for distinguishing what a framework regulation is as opposed to something that is not?

Mr. Campbell: Even that term is sort of a term of art. I find, as I get into the regulatory field, that we are often inventing stuff. The language of regulation, the language which law has given us to deal with regulation, is really quite impoverished. It is very general.

Basically, we consider framework regulatory legislation as the regulation that is recognized as being necessary to create a framework within which the marketplace operates. Anything that creates that marketplace framework for the operation of markets is in that category. It is competition law, intellectual property law, patent, trademark, copyright. It is your financial industries law, insurance, banking, securities.

Where you get into the grey area in the question of framework is, for example, transportation framework regulation, telecommunications framework legislation. I think my answer to that in the case of telecommunications would be that absolutely any place where there is a recognized function in terms of the economy and a generally recognized need for a monopoly controlled by government, you are again getting into framework, because it is the system under which the society's economy functions. But you can argue that.

Coming back to evaluation then, there is a requirement under our regulatory process action plan that every regulatory program gets evaluated once every seven years. We just divide up the 146 federal programs and every year there are 20--some that are supposed to be evaluated. The results are drawn to the attention of my minister, and if there are particular issues that come out of that evaluation calling for opening up that regulatory program,



then that is the point where you sort of have this sunset effect. That is the concept. We are still experimenting. Because there had been in the Nielsen context such a thorough review of regulatory programs, it still remains to be seen whether over time this particular concept will work.

That is the way we have introduced the process. The only thing I should leave off with is that it is fine to set up a process, but then the question is, do you need a policeman? Do you need regulators for the regulatory process? Our answer was yes, which was embarrassing for me because I had spent most of my time attacking regulation and suddenly I was put in charge of the regulatory system.

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In fact, it has been an excellent experience, because there is clearly a psychology of regulation. There is something that happens to your head as a bureaucrat or as anybody who is suddenly in the position of running a system subject to controls. So, some of the lessons we have learned are quite important in terms of priority setting. When do you approve an impact assessment? Does my staff get captured by the departments they deal with? That is the whole capture theory. There is some really interesting stuff that comes out of it.

Partly to make sure my staff does not get too friendly with the departments--because their main job, as opposed to Richard's, is to check the regulatory impact analysis, the policy concepts that go into a proposal--they are not allowed to say no to a proposal except on procedural grounds. In other words, there are two things that have to be in their heads.

The first thing is, have these proposals gone through the necessary process? Have they been planned? Are they part of a priority setting and do they meet the government's basic requirements in terms of process? If, then, for example, the impact assessment I have just passed around has been properly done, sincerely done, in relation to the significance of the proposal--in other words, if it has minor significance, we do not expect pages and pages, but if it has major significance, then we expect more--they make that objective judgement on the process. Then they stamp it off and it is approved for introduction to ministers.

The second thing is to advise our minister who goes into the cabinet committees as a representative for regulatory policy on an objective, horizontal basis. In order to ensure that, on policy grounds and procedural grounds, a regulatory impact analysis statement has been properly done, we have developed a checklist that we use in our office. If it is a simple, straightforward regulation, there are a whole series of questions that we ask our analysts to make sure they have thought through dealing with an issue. If it is more complex, we have developed a more detailed questionnaire where there are a lot of important questions relating to the process.

I would like to table those also, because you may wish to consider the question, first of all, of whether you have a policeman with any kind of system, and second of all, who the policeman should be and to what extent a legislative committee or a bureaucracy should be the policeman. Those are good questions.

I am sorry to have taken so long, but that is the process we have set up.

Mr. Chairman: On the last point, just so I at least understand the

extent to which you have independence, it is not a situation, for instance, where you are independent of the government. You are clearly, as an organization, part of the government, but there is a dedicated function for a minister to pursue the policy considerations in terms of regulation. I guess that in the context that you raised, of budgeting, you really have a regulatory budget framework something akin to what we would have as a Management Board. In Ottawa, I guess it is the Treasury Board that would carry out a similar function on the monetary side.

Mr. Campbell: That is exactly the way to look at it. It would still be considered a little bit controversial to look at it from that point of view, because there are a lot of people who are a little nervous about the idea of limiting what has previously been a relatively unlimited instrument of government. The idea was that governments raised money and had a pot. Only in the last 15 years did we all create the idea of management boards that are responsible for making choices. For a while, it did not look like there was any limit to the golden goose. All of a sudden, choices had to be made in the expenditure area.

In many ways, what this system in the regulatory area is doing is just a parallel, a few years later. It is saying that regulation should also be seen as a limited good, a sophisticated good, and a good that has an economic effect. In that sense, decision-making is needed that goes beyond simply looking at it as a legal issue.

You raised the question of budgeting. I should mention that in the first year of the operation of the process, for reasons that we cannot really confirm are the result of the process, there was a notable decline in the volume of regulation in the system. I was interested that Quebec in the first year of its system found the same thing. Because there were not great statistics before these systems went into effect, it is very hard to take any kind of credit for that, but there is a reality.

We are in year two now of our process and we are watching with some interest, because in the fourth year of the government's mandate, all the major legislation has come through. Regulatory activity naturally follows. Will we simply return to normal levels? That is a good question. In a year we will be able to tell you.

Let me pick up your question from that. My own impression is that you need only to worry about budget at the point where your system, your resources, start to be overdone. A very specific objective we had originally was to try to get past logjams in the process, which used to mean that regulation would take up to nine months to go through legal approval. There was this huge bunching up.

That had two big costs. One was the delay and the uncertainty it created wherever, in the marketplace or private sector. The second one was the tendency to encourage people to bypass regulation, legal systems, and do it through other means, especially arm twisting. If a fisheries officer in the field knows it is going take nine months to get a regulation passed, he is probably going to go out there and use other instruments. "If you promise not to catch lobsters below 12 inches in length, I will wink a little bit when you are out on the herring fishery." You get that kind of informal regulation. That is a very high cost, yet it is a practical result of delay. In that sense, budgeting becomes a real issue one way or the other at the point where your resources become exceeded. In year one of this process, we did not face the problem because of this decline in regulation.



In year two we are now looking at the issue. Even in year one, when there was not overall pressure on our resources, there was temporary pressure. There are quite discernable points in the year when we have high volumes of regulation and when choices have to be made. December is a good example. The end of the fiscal year is another example.

The tendency of legislation these days, partly to bypass the delays, actually to build in a specific date on which it would be implemented--"This legislation will be proclaimed and in force as of such-and-such a date"--puts a gun to the system. If you do that too often, then you get some bad oversight work as a result, but you get this need for a budget. Anyway, the system is there for a budget; whether a budget will be necessary, in strict terms, remains to be seen.

Mr. Chairman: One last question about budgeting. What does it cost to run your office?

Mr. Campbell: I had better give you a direct cost and then perhaps get into what is the cost of the system that we run, which is a disbursed cost. My actual office consists of 14 person-years and it has a budget in the order of \$300,000 per year, not including salaries. If you include salaries, it would come to about \$800,000 per year.

We chose to keep it small for two basic reasons. It is small, because we cover only about 60 per cent of our job. We have to make choices every day on the degree of coverage. Fourteen is roughly the size of a secretariat for a cabinet committee. The original idea of our office was that it would serve a cabinet committee structure. After a number of months, there was further experimentation creating a distinct program with the minister and the public, but we kept that number of staff.

To fully cover our field, especially in the policy area, we would probably need to go up to about 20. So a key question is, at 14 we can handle the process, all the concepts I have talked about this morning, but if you want good work in the policy area, that would be too small a group at the federal level, where there are, say, in rough terms, 1,000 regulatory initiatives a year. By the way, even measuring in the regulatory field is complex. I do not know exactly where Ontario is, but my impression is it would run somewhere in the order of 700 or so. You are about two thirds the size of the federal level, according to some statistics that go back some years.

If that were true, there is a proportionality that you could draw from that statistic of 14 people. The \$300,000 operating cost is in fact the amount of money that has been allocated. We have not spent it because, by and large, we have developed this system so that the departments pay for the cost of prepublication. That is a cost in the system. It is about \$175 a page, so we know exactly what we are doing. For example, in one case there was a regulatory impact analysis statement that came in that was longer than the regulation. It raised the question, is more information to the public a big issue or not? We sort of cut it halfway and put a little footnote saying, "More information is available if people want it."

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The main part of the expenditure is the annual plan, which we are finding is remarkably cheap. We can produce that plan for under \$60,000. Then it is a question of how many copies you put out and whether your costs are covered. We have not used our full budget. If we were really pressed, we could probably live on as little as, in operating terms, \$100,000 per year.

It all turns on how much policy you build into that, because then you get into the area of needing expertise in key areas, complex areas such as bankruptcy, telecommunications and copyright. You would never want to have the depth of expertise to second-guess the departments, but sometimes you want the depth of expertise to understand the issue.

Mr. Chairman: Have you done any analysis about how much money you may have saved the government by stopping the government from spending money in some other way?

Mr. Campbell: We have not done that analysis. The Auditor General is undertaking a review of the regulatory process and there may be some information coming from that. There are a couple of reasons we have not done it yet. The first reason is that we are working very hard to get statistical systems in place. In no place in Canada are we aware of effective statistical systems on the regulatory system. Statistical systems start with simple questions. How many regulations do you do a year and how does that compare with other years? How many pages of regulations are going out? Then you get into the more sophisticated questions. What is the cost to the bureaucracy, the government? What is the cost to the economy of these regulatory programs?

Actually, one of our activities is a training research program, where we are trying to encourage inside the government the development of techniques that do not exist anywhere. How do you do an effective cost-benefit analysis so that you end up with a somewhat reliable estimate of the true economic impact of a regulatory proposal? I cannot give you a statistic, but I think it is fair to say that the cost savings to the government are not considered the main objective, because the regulatory structure in Ottawa, and in fact in any government, is so cheap relative to its impact. It is one of the main reasons it is an attractive instrument.

The Nielsen task force found that regulation at the federal level in 1985-86 dollars cost \$2.9 billion per year. It involved 35,000 public servants directly, about 15 per cent of the public servants. On the estimated cost to the economy, there are different studies that have been done. In the United States, they use a 20-times multiplier, so if you spend nearly \$3 billion per year at the federal level, that would cost \$60 billion at the economic level.

Work done by Bill Stanbury and a man called Thompson in Canada by the IRPP, the Institute for Research on Public Policy, said to be careful about those kinds of multipliers, because it depends on the regulatory program. But you are fairly safe in assuming a 10- to 20-times multiplier to try to work out the more or less direct costs on the economy.

Let us say for fun that we have added \$1 million or \$2 million to the cost of the federal regulatory system, relative to \$2.9 billion. That is just a hiccup. But if you multiplied it and said we had raised it by \$100 million, just for fun, then what kind of effect have we had on the system? A single decision that is done smarter in financial institutions regulations, or let us say telecommunications regulations--just a single, little decision in the regulatory field--has such enormous importance for the way things emerge thereafter in that field that you are very quickly talking about dollars much larger than any conceivable cost to the government.

One reason we have not done very much statistical work is that you see every day instances where a small adjustment can be made by a different approach, by a little bit more forced tradeoff between economics and politics or economics and social objectives, and in each case, when you trace it out



over the years, the decision has such a huge difference of cost that it makes the internal cost relatively insignificant.

Mr. Chairman: I have one last question at this point. You talked earlier about prepublication. Who reads prepublication? People with insomnia?

Mr. Campbell: It is a very good question. We have not mastered the communication of regulation, prepublished or even post-published. Let me start with the fact that we put our regulations for prepublication in part I of the Canada Gazette. Who reads part I of the Canada Gazette? The subscription list is there. We have checked it and it is not very large, but it is quite a large impact list in the sense that all the major associations in the country receive it, all the major law firms, people who are following what is going on in government. There is a readership and we see the evidence of it all the time.

The second thing is that when we have a weekly meeting of the special committee of council, which approves regulations, we put out the results in the public domain right away. There is one company, Publinet, which takes it and puts it out electronically by Saturday. People who are subscribers can actually get the stuff that was passed in the previous week's regulatory structure very quickly. The fact that we actually put it in the Gazette does not limit how it can be used otherwise.

That then runs into another point, which I think is really important. Whether or not it is the Canada Gazette or something we are working on, that is, other vehicles that would get to the public, there is an underlying problem that has to be addressed, in our opinion, which is the tendency of people to consider regulation technical, boring, elusive. From that point of view, you could put it out in people's mail every week and they would not read it. How do you get the public to recognize, how do you get legislators to realize the importance of what is happening in the regulatory field, because 1000 regulations are 1,000 pieces of legislation? All of us who have had any particular dealings in various sectors know how much import can come through a regulation.

In answer to your question, we see the problem as not just a matter of how you get people to read the Canada Gazette. We find more and more now subscribing as they find that this stuff is there. The second question is, how do you get a wider group of the public to take an interest in an area of government where there is a great deal of significance, which traditionally has been left to lawyers and specialists? The solution to those problems involves public education, as well as the vehicles of getting the information to the public.

Mr. Chairman: Perhaps there is one other question I had better pose. I am sure it will come up otherwise. Has there been any effective delay in the process of making a regulation by the government as a result of all of this reform?

Mr. Campbell: It is one of those curious things. The effect should have been to add more time to the process because we are adding a new step, this prepublication step. We are adding the new step in terms of the impact assessment and we are adding time for the absorption of public comment before there is further action. We expected and thought that part of the price would be some delay, but statistically the effect of better management of the system has been just outstanding.

As opposed to nine months on average from the time a regulation left a department to the time it was in part II of the Gazette, approved under the old system--with the extremes being a very short time up to four years, but still the average nine months--this past year, we were running at 100 days from start to finish. That is just over three months. That is a remarkable record. In fact, we do not expect to be able to sustain it, but the answer to your question then, statistically, is that under the new process we cut in half the length of time it took to get regulations through.

The reason for that, we think, is that in departments now there is much less of what happened before, where quite low levels in a department would put forward a regulatory proposal that would be signed off matter of factly. Ministers would never see it and deputy ministers would never see it. It would end up all of a sudden being reviewed by the legal people. Then it would get into cabinet maybe or maybe it would not. There was a lot of wasted time because regulations were prepared before people made a policy decision to act on them.

Now nothing comes through that has not been signed off by a deputy, signed off by a minister, before we will even start the process. We feel that has had the effect of clearing the decks and therefore making it possible for what matters to get through faster.

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Mr. Chairman: Thank you. I have, in the order I saw them, Mr. Smith, Mr. Callahan and Mr. Philip. I will just remind you all that I am mindful of the time.

Mr. Smith: I have just a short question because some of the ones I wanted to ask were already asked.

You made the statement that the ministers and the members really had no power over regulations three or four years ago. What is the percentage now? Maybe that is not the appropriate term. What control do you think they have over regulations now after you have changed the process somewhat? Do you feel they have 50 per cent power? The electorate thinks we can turn the world on its ear, and we cannot. Anyway, what is your comment?

Mr. Campbell: My comment would be vis-à-vis the federal Parliament. My impression has been generally that provincial governments and legislatures have tended to work a little bit closer. The distance between the legislator, the minister and the decision-making process is shorter. In that sense, what I have to say about Ottawa may not apply.

The only control Parliament had over regulations, subordinate legislation, prior to 1984, was through the Statutory Instruments Act, which Richard will be talking about and your witness this afternoon will be talking about. There was sort of an allowance for parliamentarians to comment on the legality of decisions, but in policy terms, it was insignificant. Other than legal policy, it was insignificant because of the nature of the legislation that was being passed.

The federal Fisheries Act has five pages, passed, I think, in 1978. It has 19 volumes of regulations underneath it. If Parliament gives that kind of general power to executive decision-making, it makes it very difficult then for parliamentarians to come in later on. Whereas before there was very limited parliamentary control and, in my opinion, virtually no ministerial



control over the process, the situation now is that reforms in Parliament have made a big difference.

The power of disallowance that has been granted the committee of parliamentarians, a standing joint committee, is an important power. It has a disciplining effect. There is greater power in the individual committees on policy issues. They are perfectly free to call a particular regulatory issue in front of them. In that sense, I think there has been a significant increase in the parliamentary power, though largely as a result of parliamentary reform, not our process.

On the other hand, ministers went from virtually no real, hands-on control to full control. Every week now, on the regulations that are going in front of cabinet, our office controls the agenda. Our minister is briefed on every item, and she goes into cabinet with a policy position on every regulation going through in relation to the government's policy. Within the government's policy, for example, a regulation should be firmly based on the original parliamentary intent. Part of her responsibility is accountability to Parliament in the delegation that has been given. It works very well. If in the average week the agenda is 20 regulations, there will be comments or challenges on three or four. They will be either on a policy ground or: "This should be republished. It should not be rushed through."

That is at the cabinet level. Individual ministers now have much greater control. They actually have to put pen to paper and sign off the proposal. Their own staff takes much more interest than used to be there.

Mr. Smith: You have always worked in government, so you have seen it progress or not progress.

Mr. Campbell: I have spent 21 years in government for my sins, but only the last four in the regulatory field. I left law school here at the University of Toronto to escape law, and for some reason, I have come back to it. I went into the foreign service.

I cannot really compare back beyond 1983-84, but the evidence was there. I found there was not one lawyer in the entire federal system who could tell me, "Here is the way the system works and here is the logic behind it." Then when I went into it further in terms of political theory, what had happened was that from 1965 to 1980 there was as much regulation passed as had been passed from the end of the Second World War to 1965.

There was a burst of regulatory legislation. Because there was so much of it, the concept of umbrella legislation developed in all governments, which in effect says, "Here is the general principle," and then it will be done by regulation. That is where, if you look at the charts, they sort of go like this for many years and then suddenly the regulations just shot like that. That is where this regulatory reform movement came. Deregulation is not the issue; it is the smothering potential when there are just so many pieces of legislation out there with this power of relatively unfettered control.

Mr. Callahan: Just a couple of questions. Obviously, the intent here, as well as the question of getting some control back to the ministers and back to the parliamentarians, is the notice to the public to give them an opportunity to respond. I guess you have told this committee that there is a standing committee such as this. Is that where the public are invited to air their concerns, or do they send in cards and letters and a minister or whoever, staff, makes the decision about whether there is any merit in their argument?

Mr. Campbell: I think that brings out an important point. The government is in no position and should not be in any position, as executive and as administration, to tell Parliament how it should handle its authority to legislate. In that sense, most of what I have been talking about this morning is a regulatory process set up in government to overcome the problems of the executive and administration.

Parliament has a standing committee, and Mr. Thompson will talk about it. It is set up under an act for a particular purpose that reflected some of these same concerns, but they were more concerns in the early 1970s with the legality of the action, and law branches into policy. The net result is the committee that is in place, the standing joint committee on what is now called regulatory scrutiny. It has not been a place that the public would normally direct itself, because (a) it would not be aware it is there and (b) it is a committee that tends to take a more legal view. If I were a lawyer in private practice and I was concerned with a particular area, I sure as hell would go to that committee and talk to them, because they are the experts on regulation in Parliament.

Where the public goes is at the bottom--and this is an important thing. Every one of those items in the annual plan and every regulatory impact analysis statement that gets published has a contact name and phone number, the official who is responsible for the particular regulation. So members of the public have a choice of either approaching that person directly or, if they are concerned, they would go to the minister or even the Prime Minister on an issue.

There is every form of experience in terms of public reaction as they experiment with this. But one of the things that is happening is that this system has now created more collegiality of decision-making about regulations. As opposed to before, where the public would only react to the individual minister or to the parliamentary committee on the issue, immigration or economic, there is now a recognition that there are a group of ministers around that table and in developing your view, you might go to several ministers.

The small business minister has an interest in many regulations that go through. Ministers who do not have regulatory programs may have a voice because of the policy direction they come from. We are finding now that there are some excellent discussions in cabinet, real tradeoffs, recognition of issues, that was not there before. So the public in turn is well advised, depending on the degree of concern they have, to go to whatever level or whatever sector makes sense from the point of view of their concern.

Mr. Callahan: Just quickly. I gather that the charter must have had some impetus on this whole program?

Mr. Campbell: No, it did not, to be frank. The charter had important impacts in terms of the actual regulations and the approach to them, and Mr. Thompson's function, which he will be going through, does deal with the charter. Let me just mention that the point you make raises a really important question, to my mind perhaps the most important question when you are addressing the regulation of regulation. Do you go into codes and law or do you approach it administratively?

The charter is a regulatory code; it inhibits behaviour and often provokes stupid behaviour. In that sense, the charter is something which, if you are a regulatory reformer, should be looked at sometimes with a jaundiced



eye. If an issue comes through and the justification is that we must do this because of the charter, there is nothing you can do about it; that is the law. But sometimes, if you have any room, you might argue that in some cases it would produce, as all regulations tend to, perverse or unexpected effects.

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Mr. Philip: You mentioned briefly about the Auditor General doing a study on your effectiveness and I am wondering, when is the Auditor General bringing down his report? Surely by now you have had the comptroller general do an internal audit. What are the results of the internal audit of your operations?

Mr. Campbell: The Auditor General, of course, reports to Parliament and sets the schedule. It is only in the last few weeks that we have become aware that they are going to do a study. There is no date that has been established, but if they are proposing to do it during this fiscal year, then that would seem to be the kind of thing that they would report in their report on this fiscal year--whatever that means. I think that means the fall of 1989 type of thing, but I am just guessing; I do not know that for a fact.

Mr. Philip: Or they may do a special report.

Mr. Campbell: I do not think it was seen as subject to a special report. This is an unusual type of audit, they say, because it cuts right across departments, as opposed to going into a department.

We welcome it, because we see what we have been doing as basically a three-year exercise; see what happens. Each year we are trying to improve what we are doing, and then if it is not proving itself, it should be closed. What is the concept? There is a sunset on our program if it does not pass at a reasonable muster.

In terms of the office of the comptroller general, we have been in existence as a department only just over a year and you would not normally carry out an audit that soon. As a matter of fact, again, we have always thought to ourselves that at the three-year point there should be a full-scale review to see if the costs are exceeding the benefits or not.

Mr. Philip: When I read this volume that you have and I look at anticipated impact, I guess I have not read one of them so far that has a dollar figure. I am wondering if you are improving in the way in which you can quantify the anticipated impact. There is a lot of motherhood and political jargon words also in the anticipated impact, which makes me none the wiser after I have read the anticipated impact. I mean, everything is going to be rosy and it is not going to have a noticeable impact on the world, on motherhood and on the sanctity of the family if you read some of these anticipated impacts. That does not really tell me very much.

Mr. Campbell: First of all, you are looking at the plan, and we had to decide whether somebody in the middle, in September 1988, can tell us with much precision how much impact a particular program proposal might have that he is working on for the next year. He just may be aware of it. The answer from the department was, of course, "That's our work plan for 1988; don't ask us for all the results in 1987," or whatever year.

In the plan, the impact material is meant to be general and superficial, but it is supposed to show the flags. In that sense, if you see a particular

one that is of interest to you and what they are putting in front of you is balderdash, it is an invitation for you to start the process of telling them, "Hey, you've forgotten a few other things." So it is intentionally superficial in the plan.

Your criticism, though, would be justified in terms of even the final impact of statements in some of our RIAs. They are not always adequate enough. The way the rule is right now, ministers in each department must decide how much impact assessment to do, subject to challenge at the end. If we find that somebody comes in with something very superficial, without a fairly careful costing, then we are supposed to send it back, and occasionally we do.

Mr. Philip: You may find that Ken Dye has some particular comments on that area.

Mr. Campbell: You are quite right, as a matter of fact. Underneath your point, the question is, can you easily cost-benefit regulatory proposals? The answer is no, it is not easy.

The first question is, do you go for direct cost impacts or do you get into indirect cost impacts? How do you factor in the benefits of the regulatory proposal, and how do you trade them off? It is usually an apple versus an orange. Those are tough questions.

What we are trying to do, as a matter of fact, is stoke up more research and better work in this area. The Americans are very advanced in this, but it gets into some tough problems politically. For example, what level of cost to save a life is an unreasonable expenditure? Sometimes you do not want to know the answer.

You may recall that the second of the nominees for the Supreme Court in the United States, a man called Ginsburg, I think, was running into trouble before he announced his smoking preferences. One of the reasons he was running into trouble, you might be interested to know, was that he was going to be attacked in the Congress for being too ardent about cost-benefit analysis of regulations when he was in the counterpart office to the one in which I am involved in Ottawa. They thought they were going to hurt him and his hopes for that particular office by virtue of his being too zealous on that front.

Mr. Philip: But you can at least state them and then you know what your objectives are. If you are going to meet other objectives, then at least it is done rationally rather than irrationally.

Mr. Campbell: Sometimes they have been well done.

Mr. Philip: The opponents to your objectives may overstate the cost if you have not stated it clearly.

Mr. Campbell: The important point for us is what you see in the regulatory impact analysis statement as opposed to that planning document. It is what ministers have seen and the basis on which a decision has been taken.

Let us say headlight regulation; should there be daytime headlights compulsory on cars? That is a very interesting cost-benefit analysis. It raises all the issues. It is in public; it is being put out. The public saw the basis on which the ministers drew their decision in that case. It allowed for the automobile producers or the consumer groups to come in and say, "That is malarkey," and in fact did produce feedback which led to slightly different final decision-making.



Mr. Philip: You have dealt primarily with what I would call the front end of this procedure. I am wondering if you can say something about any procedures to look at oversight. What is the use of having regulations if there is nobody out there to enforce them or if the people who are in charge of enforcing everything else give the particular regulation a low priority? Can you suggest a procedure?

In Congress, of course, they have oversight committees that spend a large part of their time in what we would call ministerial areas, in different department areas looking at oversight, at whether or not Congress's will is in fact being done. I am wondering if you can deal with the whole procedure of oversight and what is developing federally in this area.

Mr. Campbell: The basic answer to that question is evaluation. I mentioned evaluation in the context of sunset, but in effect it is the answer to your question. Once the monkey is out of the barrel, who checks to see whether it is doing what it was set out to do and whether it has outlived its usefulness, whether it has been efficiently handled? Our answer to that, first, has been a concept of what we call review and evaluation. We use the words in two different ways. The office of the comptroller administers a program right now, program review, where departments are expected to carry out reviews of all programs against expenditure. They ask the question, "Is it efficient and is it effective?" That is ongoing.

We have now added the idea of regulatory programs, a subset, and that is the thing I mentioned before. On a cyclical basis, compulsory departments must cover all regulatory programs and review them, not only against efficiency and effectiveness, which comes into the issue, but against several regulatory principles, such as, is it still necessary? Is it achieving its objective? Is the cost reasonable? In principle, departments will look at the question of whether it is working.

Second, there are two other layers of evaluation that are built into that system. Either on an occasional basis as a particular issue comes up that catches their attention or as a result of the evaluation process, ministers can look at a particular issue in cabinet and call for studies. There is now a distinct role for Parliament to play.

The third part of this, and it has not yet been picked up by Parliament, was the idea that Parliament should also carry out an oversight function on a 10-year basis through the regulatory legislation, again on a cyclical basis. That was put out as part of the government's regulatory reform strategy, but it is not the government's role to make a decision on whether to do that.

An ad hoc approach then is basically what is happening at the cabinet and in a sense parliamentary levels, and it is not working badly. In some cases, a regulation will come through, and our ministry will say, "We think that regulation shows a problem in administration." For example, drug review was a simple regulation that came through. It was challenged. The question became one of the efficiency of administration, and there has now been a one-year exercise to improve that, all based on administration.

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The answer to your question is that there is a formal system at the departmental level and then a kind of ad hoc system that emerged at the cabinet and legislative levels, but there is room for a more formal process if Parliament chooses.

Mr. Philip: This is my last question. If you feel it is a policy question, Mr. Campbell, and you do not want to answer it, I will understand. It is fine to state the citizens' code of regulatory fairness, but the reality is that you have a committee of the House of Commons that does not have representation from citizens. If a citizen goes to the regulator and says, "I think you are wrong," the chances of the regulator saying, "Yes, I really did make a dumb regulation, and I apologize, and I am going to go to the minister and tell him I erred," are probably not all that realistic.

I am wondering if it is your feeling that in areas like this, with government being more and more complicated, there is a need at the federal level, as our provincial colleagues have kept on telling our federal colleagues over and over again, for an Ombudsman who would deal with the kinds of complaints our provincial Ombudsman would deal with when process is not followed and when regulations are in fact wrongly interpreted by public servants and individual citizens aggrieved.

Mr. Campbell: There are touches there I am going to have to avoid, but let me approach it this way. In addition to the points you have made about the disadvantage the public faces in dealing with the system, which are all true, there is another one I am horrified by, frankly, and it is worth recording; that is, the number of times where the public is frightened to criticize the regulators, the officials, because those guys have the power of decision or whatever afterwards. It is probably the most alarming thing I have come across in this particular work.

I have even seen cases where ministers are scared of the regulators, and we are talking about dollars and jobs and decision-making that is really quite important. The whole concept of regulators, independent regulatory agencies, policy-making, policy directives--there is a very big field here which, I think, in a way to our shame in Canada, we are getting into rather late, but we are getting into it, anyway.

On the question of how you deal with the righting and balancing, there are many models. There is the Ombudsman concept, and in a funny way the minister responsible for regulatory affairs in Ottawa is seen as a regulatory Ombudsman. There is now a minister at the cabinet table who can be addressed just on the grounds of regulatory process or unfairness. There is somebody to go to and you can expect some discretion in terms of dealing with an issue.

Mr. Philip: But if he wants to remain in cabinet, he is not going to jump over too many of his fellow cabinet ministers.

Mr. Campbell: It will be subject to what happens in cabinet on all issues, which is the give and take. A lot will depend on the individual, but I can tell you that I have now watched two ministers, Mr. Hnatyshyn and Mrs. McDougall, and in both cases the concept of a minister being there, without having to confront your colleagues, is very useful because it is simply a perspective.

If you are going in as a minister of widgets and your whole world is widgets and all the interest concerned with widgets, you have a particular perspective and certain things may make sense to you. Another minister may come in on the side saying: "Yes, but how about compliance? It is going to take a lot of people to produce the review and inspection procedure you are calling for." Just having somebody to ask those questions is worth while.

In the case of the public, to go back to your question, there are many



instances where private sector groups will come to the minister responsible for regulatory affairs and raise an issue from a perspective--paper burden, for example--and they can expect that it will be addressed.

But there are other ways to deal with the problem. Some people would say to set up an administrative procedures act such as in the United States, such as in a sense they have in Quebec with the Regulations Act, to legislate it so that in a sense Parliament becomes the controller of a procedure and so on. That is an option.

The option we have adopted in Ottawa is a Mackenzie King option. It is intended to avoid encouraging litigiousness on procedure and codes of conduct, where people can use legal procedures to tie up the process, and at the same time to try to address some of those problems of equity and public fair treatment, and in the end, good government.

Mr. Philip: If you go the legal model, though, you could tie up a ministry for years.

Mr. Campbell: That is right, and then you end up with bureaucrats becoming lawyers and taking high ground politically so they can deal with the issues in the courts and so on.

In a funny way, as I see the regulatory field right now, that is the excitement of it, because in many ways we are looking for ways in which to apply law in a way that retains a high level of flexibility because of the nature of the world, while at the same time maintaining our democratic principles where somebody is elected to control the use of that tool. It is a really important issue.

Mr. Chairman: Thank you. Are there any other members who want to pose a question? That being the case, Mr. Campbell, I want to thank you for a very comprehensive and excellent presentation. We are very grateful for your taking the time to come down with the schedule you have and the schedule you are returning to. Thank you very much.

Mr. Campbell: Thank you very much. I promise you all at Christmas time the 1989 regulatory plans in your stockings. Thank you, Mr. Chairman, for letting me go now.

RICHARD THOMPSON

Mr. Thompson: Mr. Chairman, Tony Campbell has dealt with the interesting things and left me with the dry lawyer's stuff. I will speak briefly about the role my group has and the process and answer any questions. I am heading a section in the Department of Justice. It is called the Privy Council Office section, but like all the lawyers who give legal advice to the federal government, we are all part of the Department of Justice. The group is quite large, 20 legal advisers working directly on files. Their job is to examine all regulations. They also examine all orders in council that are passed by the government and give advice to the Privy Council Office on the machinery of government and on senior personnel. In proportion, the principal work is this examination of regulations, which has to be done in both languages, so that the group essentially is divided into teams of two; one lawyer works on an English version and one on the French version.

The process, dealing only with regulations, is that the drafting is done by the responsible department, typically with the assistance of legal

advisers, again Department of Justice legal advisers. The original drafting is done not in my office but somewhere else, then passes through Tony Campbell's operation and then to the examining lawyers in my group.

What happens is that there is a consultation between this team of two lawyers and the originating officers in, say, the Department of Agriculture, and a fair amount of toing and froing, communication and, eventually, the production of a discussion draft by my group, which then goes back to the originating department. Then, at the minister's whim--in this example, the Minister of Agriculture--that draft regulation is submitted to the Governor in Council for approval.

It is approved in a group called the special committee of counsel, which is essentially a cabinet subcommittee of a minimum of four ministers, that meets every second week. Then the package of regulations approved by that subcommittee is approved by the Governor General and then, the same day, registered by the Clerk of the Privy Council. Registration is important because at that moment the regulation is in effect. It is made at registration. As I understand your system, the regulation is made when it is filed, so filing is essentially the same as registration. Then the rule is that within 23 days it must be published in part II of the Canada Gazette. You have a copy, an example of that.

The examination that we do is contained in the Statutory Instruments Act, the test that we apply. I think they may be interesting for you. They are contained in subsection 3(2). I will read parts of it:

"Upon receipt by the Clerk of the Privy Council of copies of a proposed regulation...the Clerk of the Privy Council, in consultation with the Deputy Minister of Justice"--essentially, by delegation, my offices--"shall examine the proposed regulation to ensure" four things:

1. That "it is authorized by the statute;"
2. That "it does not constitute an unusual or unexpected use of the authority" in the statute;
3. That it does not conflict with the Charter of Rights and Freedoms or the bill of rights; and
4. That "the form and draftsmanship of the proposed regulation are in accordance with established standards."

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We have a role of standardizing all government regulations. In theory, therefore, what comes from the pen of an officer in the Department of National Revenue should be in the same form and draftsmanship as a document that comes from a different officer in the Department of Agriculture.

The things that concern us principally are that aspect--the standardization of form and draftsmanship, and the requirement that there be authority. For all kinds of reasons, the originating department will exaggerate the claims about the power they think they have in the statute and the kind of regulation they can make. We have not had very much experience in rejecting a regulation because we consider it to be unusual or an unreasonable exercise of the authority. I know that was one of the questions your clerk raised with us.



The question then is, when we have done the examination, what happens? Let us say we find a problem with authority, how do we react to it? As I say in almost every case, those problems are resolved by discussion. We point out a question in our minds about whether or not a regulation is authorized by the authorizing statute, and sometimes in an amicable way and sometimes in a less amicable one, the problem will be resolved by redraft. At the end of the day, the Statutory Instruments Act provides for a report being made to the clerk of the Privy Council. In the time I have been in this position, just slightly over a couple of years, that has been used quite sparingly. It is the big stick, and it has only in the most extreme cases been used and typically in cases where ministers have, for appropriate political reasons, required a regulation in a particular form and they have gone ahead with it.

The concerns that we have had have been touched upon in part by Tony Campbell, but he mentioned to you that some years ago this examination process was taking nine months on average. That, clearly, was becoming less and less acceptable to the regulators and the pressure was mounting on the Department of Justice to do something about it. Some reforms were introduced and there were some instructions of cabinet that this turnaround time be dramatically reduced.

We are now working at an average turnaround of a few weeks. For the entire process, as Tony says, we are now looking at something like 100 days from the very beginning, from his receipt of a regulation, to the making of the regulation, on average. There has been a considerable emphasis on process efficiency over the last while and it appears, for the moment at least, that has paid off.

Those are introductory words about what the Privy Council Office section of the Department of Justice does and its essential process. I would be delighted to answer questions.

Mr. Philip: You refer to the Privy Council on those rare occasions where you cannot reach some kind of agreement with a minister. That is a cabinet document and therefore not public. Is that correct?

Mr. Thompson: That is right, yes. It is a draft regulation.

Mr. Philip: Would there be any way in which a person who feels grieved, or through his member of Parliament, could obtain a similar opinion from you?

Mr. Thompson: No, we give advice to the government.

Mr. Philip: Is there any place where an opposition member in the present House of Commons could obtain an independent adjudication that a minister was exceeding his authority under an act through a particular regulation, or does it simply have to be my word against his word and try and argue the case as best I can in the House of Commons?

Mr. Thompson: If you assume that the regulation has been made and then there is a question, so it has been registered, then the one group that obviously has the first crack at it is the standing joint committee of the House of Commons and the Senate, which looks at a regulation when it is in force and will itself come to a judgement about whether, in its opinion, it was authorized.

There is a good deal of exchange, of correspondence, between that

committee and ministers. The committee, even without the new powers it has, was always in a position of considerable influence, because it would publish this correspondence. It would write to officials and officials would write back giving their defence of their authority, and all that would appear in a public document.

Mr. Philip: The committee, though, could not subpoena your opinion.

Mr. Thompson: No.

Mr. Philip: Because it is a cabinet document.

Mr. Thompson: In that case, I suppose, because it is privileged communication between solicitor and client.

Just to go on, the other obvious place where it is tested is that if there is somebody aggrieved by a regulation, one of the positions he can take before the court is that it is not authorized. That happens.

Mr. Philip: That may cost an awful lot of money for very little gain.

Mr. Thompson: I agree. If you are talking about an individual person's concerns, that is right. There is not a quick and easy way to deal with it except through the standard channels of dealing with his member.

Mr. Philip: Do you feel that an independent adjudication or publishing of opinions would serve the public better or would serve Parliament better?

Mr. Thompson: I suppose that is a matter of conjecture, which I am somewhat--

Mr. Callahan: Be very careful. Your job may be on the line.

Mr. Thompson: That is right. I have to approach that with a little bit of care. Essentially, I am being paid to give--

Mr. Philip: Advice to the government.

Mr. Thompson: --a lawyer's advice to the government. I am sure you as a client would have the same attitude about the legal advice you get. In a sense, it is up to you to accept it or reject it. Indeed, that is exactly the position the government is in. It does not have to accept my advice, but because the letter to the Clerk is used sparingly, it has a fair amount of impact. It would be quite unusual for the government to go ahead with something when it has that opinion, that a regulation is unauthorized or contrary to the charter.

Mr. Callahan: Two things. We heard yesterday that the people who draft or approve regulations or look over regulations also prepare the private members' bills and notices of motion of the House. Does your department also do that?

Mr. Thompson: No. There is a section in the Department of Justice, the legislation section, which does government bills and some private members' bills, but there is also a parliamentary counsel.

Mr. Callahan: So you are totally separate and apart?



Mr. Thompson: That is right.

Mr. Callahan: In addition to that, you are employed by what branch of the government?

Mr. Thompson: The Department of Justice.

Mr. Callahan: The people doing the private bills and so on would be, I guess, under the Clerk of the House?

Mr. Thompson: There is a strange relationship between the legislative unit that I have described and the Minister of Justice. They are employed within the Department of Justice, but they take their drafting instructions directly from cabinet. So it is a decision of cabinet that the legislation unit drafts, whatever you like, an anti-inflation bill, an abortion bill or whatever.

Mr. Callahan: I had some concern yesterday, which I passed in a note to the chairman, that because of this liaison or this situation of being employed, in your case, by the Department of Justice, whether regulations could be attacked on the basis that you are not independent. I think that is what Mr. Philip is getting at perhaps, the lack of independence. It is similar to the arguments made about justices of the peace. Although they are in a judiciary capacity or provincial court judges, they are paid by the same department, as it were, and maybe in violation of the Charter of Rights. Has that argument ever been made?

Mr. Thompson: It has not been made. I suppose, clearly, we are not performing in any sense a judicial or a quasi-judicial function. We are acting as legal advisers and giving opinions about authority, for example, to the government, before the government commits itself to a regulation. I would think for that reason a challenge like that is unlikely.

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Mr. Callahan: When you are reflecting on the regulation, is that governed by specific criteria in a bill or is it as a result of the standing orders of the legislature?

Mr. Thompson: That is because of a statutory obligation in the Statutory Instruments Act. It is an obligation that is imposed on the Clerk in consultation with the Deputy Minister of Justice. The two of them are supposed to come to conclusions about these four tests. It is a statutory obligation.

Mr. Callahan: Is the question of examining it for breaches of the Charter of Rights specifically spelled out in that section?

Mr. Thompson: Yes, it is.

Mr. Callahan: Finally, if I could, we had a communication from Quebec. I will just read it to you quickly and ask you to comment on it. They were referring to the question of looking at it from the standpoint of the charter and they said:

"I would only add that if your province intends to create a mechanism of legal review of proposed regulations by a government department or agency, I believe the terms of reference of the standing committee should not touch upon legal issues such as conformity with the Charter of Rights and Freedoms and with constitutional statutes.

"It falls to the regulation-making authority as part of the executive power to ensure the legality of what it does before acting. Once a regulation is made, it is up to the courts to decide any question of its validity. I do not think a parliamentary committee should discuss such questions; any conclusions it could come to would have no legal effect."

Would you agree with that comment?

Mr. Thompson: If I can point to the the MacGuigan committee when the Statutory Instruments Act was being considered in 1971 and the McGrath committee more recently with respect to reform of the House of Commons, both of those committees came to essentially a different conclusion, that it was proper for the joint standing committee--and it follows, it seems to me, a committee like yours--to make those judgements, just in the same way that you would consider whether or not a Lieutenant Governor in Council or a minister was exceeding his authority in making a regulation. That is a legal question, but it seems to me that is something you might properly do in your overview goal.

Mr. Chairman: Before we go on to Mr. McCague, I read that over again last night, since we received that material only yesterday. It seems to me that is an expression of essentially an American view of the role of the executive as opposed to the parliamentary view.

Mr. Callahan: That is what I thought when I read it too.

Mr. Chairman: In that respect, I do not think it is correct, because in our system, ultimately the cabinet is a creature of the Legislature and that is the whole notion of confidence. Although there may be days when we flail around, that is the way it is supposed to work. I thought that was interesting, but perhaps not a correct view of the function of the Legislature, which was expressed in the Quebec document.

Mr. Callahan: If I may follow up on the comment that was just made, that was my impression as well.

If you give an opinion to the final people who have the say about the regulation--let us say the committee said it was contrary to the Charter of Rights. The committee would obviously be a public forum that would be on Hansard. Would your opinion to the executive be privileged or would it be available to, let us say, some aspiring counsel who wanted to argue that point?

Mr. Thompson: No, it would not be public.

As to the way the process works, this might be helpful. Let us say the joint committee takes issue with a regulation once it is in place. It then opens its correspondence with the minister, who is the person who produced it, and raises these issues, authority or the charter, for example. The minister's staff is going to consult with his lawyers and they might indeed say: "You, Thompson, and your staff examined it. What suggestions do you have for a reply by the minister to the committee?" The process is that we would explain why we came to the conclusions we came to and that in this example there was authority, and somebody would be drafting an appropriate letter for the minister in reply to the committee. That would not be legal advice. It would be an indication of the arguments that could be made to support the regulation.

Mr. Callahan: Then the committee does have the power of disallowance based on its continued view that it is a breach of the charter.



Mr. Thompson: Sure; that is right.

Mr. Philip: You might be in the unusual position of writing a letter for the minister giving the counter arguments to your original decision.

Mr. Thompson: In the odd case where the government went ahead with an initiative in spite of the advice we gave, that is right.

Interjection.

Mr. Thompson: More often than not.

Mr. Chairman: Mr. McCague, you have been waiting patiently.

Mr. McCague: You have said there are occasions when a regulation might be contrary to the Charter of Rights and the minister of the day decided to proceed with it in any event. You can refuse to answer this question. Are there occasions when, in your opinion, a regulation would not be allowed by the statute and the minister has decided to proceed in any event?

Mr. Thompson: Let me say that it could happen.

Mr. McCague: OK. That is good enough for me.

Are all the legal staff in the federal government employees of the Department of Justice?

Mr. Thompson: Yes.

Mr. McCague: It is the same as our system here.

Mr. Thompson: Yes.

Mr. McCague: The legal minds on this committee--mine is not included among those--seem to be leaning towards getting you people away from being employees of the Department of Justice. I want to make an editorial comment now to caution them against pursuing that particular endeavour. I think it would lead to a great many problems. You might agree or disagree but we will not belabour you with that problem.

Have you had occasions or instances where regulation-making powers are delegated to ministers?

Mr. Thompson: Yes. It is exceptional, but the Minister of National Revenue, under various statutes, has the power to make orders, and so does the Minister of Transport under a number of statutes.

Mr. McCague: Orders meaning regulations?

Mr. Thompson: Yes, orders which would fall under our definition of regulations.

Mr. McCague: Is there any connection between what you refer to as orders and orders in council?

Mr. Thompson: Let me give you the precise answer to your question. There are regulations which are made not by the Governor in Council, but by ministers. Indeed, there are regulations made by boards of various kinds, the

Canadian Transport Commission, and now the agency. The Canadian Radio-television and Telecommunications Commission is a example. There are occasions, which are quite exceptional, of ministers making regulations. It is unlike the British system, where the most common kind of regulating is done by the minister rather than by a central institution.

Mr. McCague: From the point of view of your mandate, is the regulating power given to ministers or boards and agencies a problem for you?

Mr. Thompson: No. The obligation is that the regulation-making authority, when it is proposing to make a regulation, must submit three copies of it to the Clerk of the Privy Council for examination. In those examples, the regulation-maker, who is not the Governor in Council, still has to go through the same hoops.

Mr. McCague: Mr. Chairman, maybe somebody here knows, but I would ask that we find out, and you report back to the committee, whether that same courtesy or rule or whatever it may be exists in the provincial government of the regulating minister having to present his draft regulations. I guess that is what you are saying. Is it draft or--

Mr. Thompson: They are draft.

Mr. McCague: Does he have to present his draft regulations to the registrar of regulations or whatever authoritative bodies there are in our provincial setup?

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Mr. Chairman: In practice, I know, for instance, that the regulations go to the registrar and the registrar will make a decision. The registrar will either put a seal on it or he will not. In any event, the minister or the ministry--it is a practical matter--can still cause that to proceed to the cabinet subcommittee. The cabinet subcommittee will then take a look at it.

One of the distinctions that I noticed, at least to the extent that I understand the Ontario system, is that the registrar has a somewhat different advocacy function here. The cabinet subcommittee will have the registrar there routinely, as I understand it, but there is still somewhat less advocacy in the formalized way of having a written opinion. His representation ordinarily would be verbal and the debate would take place. That takes place, in any event, on a technical basis, as opposed to on the merits, whereas, as I understand it, to some extent at least, you would have more than a technical argument, Mr. Thompson, that might come forward in the documents that are submitted to cabinet.

Mr. Thompson: That is true, but very exceptionally. Let us suppose that the load of regulations in a year is 1,000, which is ball park. In the experience that I have had, there might be two occasions in two years, one occasion a year, where you might raise an issue about the validity of a regulation. But it is of a silence in all the other cases. We have blue-stamped, we have examined and essentially approved the vast majority.

Mr. McCague: Are your powers the same with the regulation presented to you by the government or a ministry where the government has the authority? Are they the same power you would have in the case of a minister who had regulation-making powers?



Mr. Thompson: Yes. They are identical. So, the Clerk, in consultation with the Deputy Minister of Justice, has to perform the same examination whether it is a Governor in Council regulation, a ministerial one or one from some other agency.

Mr. McCague: That is the point that I wanted to get at to make sure that I get an answer to whether our system is the same as the federal system in that regard.

Mr. Chairman: One of the things that occurred to me earlier when we were listening to Mr. Campbell is that probably at the conclusion of our two-week session we are going to want to have the registrar come back. Just the points that have been raised this morning alone would justify it, but I suspect there will be others as we hear more people and we can ask perhaps a little bit more insightful questions along those lines.

I am concerned as well with the process to make sure that, first, we understand the differences in how it operates, because I think there are some distinctions between how the Ottawa system and the Ontario one have operated even prior to this reform period in Ottawa and, second, to get a better understanding of the real relationship between the office of the registrar and other ministries. That is the point Mr. McCague touched on. Perhaps, Mr. Thompson, you can deal with it again in terms of the issue of independence.

There was a suggestion made yesterday before the committee that the greater independence of the registrar's office, or your office as a counterpart, would perhaps inhibit the ability of that office to persuade other civil servants to do things in the most desirable way. Being outside the family--I guess that is the best way to put it--would mean a loss of influence. I am wondering if you can comment as to whether you think you would be more effective or less effective if there was a greater element of independence or some other function at any rate, some other structural way of reporting, perhaps to the Speaker, rather than through the Department of Justice.

Mr. Thompson: I take it that the question presupposes that we are, in a sense, dependent and not independent because we are part of the Department of Justice.

Mr. Chairman: Yes, because your budget is dependent upon a minister's favour as well as cabinet favour.

Mr. Thompson: The comment I would make is that the Attorney General in the federal scheme of things--and maybe in Ontario; I should know the answer--is the Minister of Justice. The Attorney General is very frequently in the position of giving legal advice to the government and that system seems to have worked over a very long period of time. Even though he is a part of the government that may be in a particularly touchy position, he is nevertheless required to give his best legal advice to his colleagues.

We are merely officials but we are in that same relationship, that we are giving our best legal advice, sometimes in the light of a fair amount of pressure to accede to a particular point of view. But we are bound by whatever the law is and it is contained in judgements and precedent. I am not getting to the heart of your question, but the purpose of my comment is that the relative lack of independence seems not to have deterred people in this position, and it might be a legal adviser's position, from giving appropriate, objective legal advice.

Mr. Chairman: Have you had pressure? Has your unit ever had pressure from other elements in the ministry?

Mr. Thompson: In every case where officials want to proceed in a particular direction and they do not want to go to the trouble of amending a statute, their interpretation may very well be that a particular act authorizes them to produce a particular regulation. So that you have invariably perhaps lawyer against lawyer in that sense, which is a very healthy tension. So that would not be at all unusual; indeed, you would expect that.

My previous experience was indeed in the other role where, as a legal adviser to a department and to a minister, I was seeking to justify why this particular regulation that I had was authorized by the statute and I would have this person in the Privy Council office of justice arguing against me.

Mr. Callahan: You get to play defence as well as offence.

Mr. Thompson: Exactly.

Mr. Callahan: Could I just have a clarification?

Mr. Chairman: Before you do, Mr. McCague--

Mr. Callahan: It is a supplementary, actually.

Mr. Chairman: Mr. McCague may have another supplementary. It is his line. We will let him go first.

Mr. McCague: Just a final point. On the point I was raising about the similarities or dissimilarities between the federal system and the provincial system as it applies to ministerial regulation-making powers, I wonder if we could have our researcher find out the answers to that question for us rather than waiting until we get the registrar of regulations back?

Mr. Chairman: OK. I have also already asked him to try to get us a list of the number of regulations that are put out from Ottawa so we could compare that as well. In light of the other discussion earlier today, I thought that might be quite useful to us, to give some sense of relative changes that have been taking place in the two parts. I assume he can do that in a timely way.

Mr. Callahan: I just got the impression in Mr. McCague's question about how the draft regulation shows up on the desk of the Privy Council, and it is accessible to the public who wanted to review that draft before it was given final approval. In a similar fashion, a draft shows up in the office of the registrar of statutory instruments and there, as well as I understand it, it would be available for the public to view, if they chose to do so. Is that everybody else's understanding?

Mr. Thompson: Let me clarify the federal practice because I may throw some light on the question. The examination that we do happens before there is prepublication in part I of the Canada Gazette, so that we would have had this debate with the client department--take my example of the Minister of Agriculture with his officials--we would have had a debate about whether something was authorized, if there were a question, and we resolve it in almost every case.



A draft regulation would then have been stamped in my office and would then be prepublished in part I of the Canada Gazette. So at that stage, there is public consultation.

Mr. Callahan: So it is a little different than our situation because we do not have prepublication.

Mr. Thompson: Right.

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Mr. Callahan: As I understand it, and perhaps you can clarify this or perhaps Mr. Dekany can, a similar process takes place with the registrar. The draft goes to him, he goes through these reviews that have just been suggested and then it is presented to cabinet subcommittee, I guess, and goes through that process, but that would be available. If I wanted to go over to the registrar's office and I knew about a particular regulation that was being proposed, I could get a copy of that and determine what it is, could I not?

Mr. Dekany: My understanding is that you could not.

Mr. Callahan: All right, then that is--

Interjection.

Mr. Callahan: OK.

Mr. Dekany: I have been reviewing the form of the regulations as they appear in part II of the Canada Gazette, Mr. Thompson, and I note that in every case the specific statutory authority, the specific section of the statute under which the regulation was made, is set out in the regulation. First of all, is that the case in every regulation that is made at the federal level? Second, do you have any problems in identifying the specific statutory section in the regulation?

Mr. Thompson: It is not invariable, but it has become the practice for good reason. It is a good practice and it is now exceptional that it would not be identified. I should point out too that the way it is identified is in the order in council, so it is the order in council which is made and then annexed to that would be a schedule which contains the regulation. It is the order that identified the authority and then the regulation is made as a schedule to it.

The second question is very interesting. Yes, frequently it is hard to determine. First of all, you have to establish that there is authority, but there is frequently a question of which is the appropriate authority, because regulation-enabling powers may be differently described in the same statute; there may be a choice. Indeed, there may be a debate about which is the appropriate way to draft the minister's wishes because of the choice of authority.

Mr. Dekany: Do you have any concern about someone challenging the validity of a regulation on the basis that the wrong section of the act is cited as the authority?

Mr. Thompson: Yes, and that happens. A position that can properly be taken is that, in that sense, it does not matter whether you have cited the wrong authority as long as there is authority. Obviously, the goal is to

establish the right authority because it is appropriate guidance to ministers and to the public, but as a legal matter, we would take the position that the important, critical legal issue is to establish that the statute contains authority.

Mr. Dekany: In your opinion, the law is that even if you cite the wrong authority, as long as there is authority, the regulation is valid?

Mr. Thompson: Yes.

Mr. Philip: And that has been tested?

Mr. Thompson: I cannot answer that question. I do not know whether it has been tested. As I say, it has been universal practice and no one has ever taken issue with it.

Mr. Chairman: It is certainly consistent with my understanding of what the approach would be, that the fact that a piece of paper somewhere did not list the authority does not mean that the proper authority somehow ceases to exist. Obviously, the law presumes--

Mr. Philip: There is a difference in this. The difference is that the authority the particular ministry is using has been cited, and the issue then is whether or not the citing of the wrong authority is grounds for an action.

Mr. Callahan: There is an authority for that in the Criminal Code. I think it is section 2, whatever the breathalyzer section is. They cited the wrong number, but it was held not to be of any consequence because the intent was there. It is almost analogous.

Mr. Chairman: It is certainly analogous to say, and this is not uncommon, that there are instances of litigation--I am thinking really more of civil litigation--that will have a debate by both sides all the way up through the trial and the judge will promptly make a ruling based on something that nobody has talked about the whole time but for which the facts in the law have been present. The judge would simply decide that that is how he wants to resolve the case. It happens and it is legal. The issue has always been a question of what the authority is. If the judge does not know about it, if you do not present it to him, he or she may not think about it.

I have certainly seen cases myself where a judge has just picked out a different legal approach altogether, frankly to get the desired result from the point of view of the judge. Sometimes that is what happens. I guess you do not know for sure until the particular issue might be resolved in a court somewhere, but the opinion expressed by Mr. Thompson is consistent with my understanding about that approach.

Mr. Philip: I suspect, though, that your case would be greatly weakened if you have cited the wrong authority. The impression on the judge would be that if you cannot get it one way, you are going to get it another way.

Mr. Chairman: It does not make you look very clever, that is fair to say. Mr. Lupusella, then Mr. McCague.

Mr. Lupusella: Considering the close scrutiny which the regulation has to go through at the federal level, how can you reconcile the principle of



the disallowance provision implemented by the committee of the House of Commons and your department, when a disallowance is implemented? On which basis, first, is this allowed, based on the consultation on which a regulation has to go through? Why is this allowed?

Mr. Thompson: Let me preface my answer. I suppose the right people to put the question to are the parliamentarians who adopted standing order 44. As for the committee and Mr. Bernier, who is going to be here today--obviously, in the committee's view--the disallowance procedure is an appropriate one. I can only speculate about what their views are, but my speculation is that very often these things are matters of opinion. Frankly, like a lot of legal issues, they are very close calls. The call we make may very well be that there is a doubt about authority, for example. Our position in that situation is not to raise a red flag but to point out to the originating department that there is a doubt. We would not then write a letter to the Clerk of the Privy Council.

We recognize there is a doubt and the view the committee might take is that there is more than a doubt, that the probability is that there is not authority for a particular regulation. In an appropriate case--and they are quite circumscribed about how many cases they can take, as you know--they may select that case as a subject of a report.

As I say, these things are matters of judgement and people clearly can differ about it.

Mr. Lupusella: Again, in your speculation, do you think that any political game is played on the disallowance provision?

Mr. Thompson: I cannot answer.

Mr. Callahan: That is wise.

Mr. Chairman: A good question and good answer, I think. Mr. McCague, and after that our counsel will have another question for you.

Mr. McCague: I have a question for Mr. Lupusella. Has he ever seen a committee without political games?

You have had experience within a ministry in regulation-making, and you have firsthand experience in your present duties. Are there any comments you would like to leave with us with regard to the establishment of the Office of Privatization and Regulatory Affairs as an adjunct to your work or just how you see it as an office?

Mr. Thompson: Yes. There is no doubt that the policing function has greatly improved the efficiency of this examination function. What was happening before 1987 was that virtually anybody in the government could draft a regulation and, as long as it was in English and French, could submit it for examination. The result of that was that my office in those days was clogged up with all kinds of initiatives that would never see the light of day. What is happening now is that there is a policing function which requires that each draft regulation sent for examination be signed off at a quite senior level. That has helped considerably.

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The other initiatives of early warning--the 1987 list indicating what is

going to go ahead in 1988--all have helped to require public servants and ministers to focus on precisely what it is they want to do. There is no question that has helped.

Mr. McCague: Mr. Chairman, this checklist that was given to us this morning is similar in a lot of ways to the checklist that has been used by our counsel sort of after the fact, just to mention that observation to you and to say to you that I hope it is an area which we will address at some time during our deliberations here.

Mr. Chairman: I certainly hope we will. I think one of the important functions we have to go through is to decide who is checking for what at each stage and who checks the checker.

Mr. McCague: The chairman.

Mr. Dekany: I have another question concerning the form of regulations, Mr. Thompson. Again, I notice that in part II of the Canada Gazette some of the statutory instruments are accompanied by a regulatory impact analysis statement, under which it is clearly stated, "This statement is not part of the regulations." Then underneath that, the first paragraph deals with the description. I take it the description acts as an explanatory note concerning the regulation.

Have you encountered any problems in explanatory notes being inconsistent or different from the regulation? Has this led to any criticisms of the regulation or people challenging the regulation?

Mr. Thompson: At the outset of the new process, we took a deliberate position, which was that the examination of the RIAS was not our responsibility. Essentially, the originating minister is drafting a regulation and the description that appears and the whole RIAS, including the description, is examined by Mr. Campbell's group.

The fact is, of course, that one of the first things an examining lawyer in my office might do is to look at the RIAS, because it is supposed to give him or her an easily readable, layman's view of what the regulation is about. We have given some advice from time to time about whether or not the regulation accords with the description, but it is not part of our function. Where we have offered that kind of assistance, it has been taken seriously and usually changes have been made to the draft RIAS.

Mr. Dekany: In your experience, is it useful to set out a description of the regulation?

Mr. Thompson: The theory of the explanatory notes was clearly a very sound one. I suppose that as time went by, the notes themselves did not quite do the job that regulators, legislators and the consuming public wanted to have them do. There is no question that when you look at a very technical piece, if you are regulating, for example, the characteristics of an aeroplane radio system, it is incomprehensible to everybody except a very small handful of experts, so you need to have something the general reader could understand. The answer is yes.

My own view is that over the last couple of years these notes have been quite a significant improvement. I can make sense now of every regulation without having to read a very technical piece.



The other comment is that, as I am sure all the committee members know, an awful lot of this weight of regulating is in fact amendments to existing regulations and not new regulations. It is very difficult indeed simply to cite a piece which says to revoke section 75 and replace it with this. It is very difficult indeed to make any sense of what that really is about. You need to have a note which says, for whatever reasons, these immigration regulations are being amended to deal with this particular bill.

Mr. Chairman: I would like to ask a question of you that I believe I also put to Mr. Campbell; that is, who reads any of these impact statements and who actually is looking at it? Is there any sense to the distribution plan that Ottawa now has? Can that be done better?

Mr. Thompson: I do not know whether this sounds unfair, but I would adopt his answer and elaborate on it. If you were to deal with an industry group, the Canadian Food Processors Association, for example, which represents a very important element of the manufacturers, it has on staff regulatory experts. It is their job to keep abreast of those things, to look at the big blue book that you have, the early warning system, and to know what, in general terms, a ministry is proposing to come forward with, and more immediately, to look at part I of the Canada Gazette. I know that is true of major law firms. They have employees whose job it is to keep their eye on what provincial, federal and foreign governments are doing.

As I say, this is more an elaboration on his answer, but the fact is that you do not in a sense need a wide circulation in order to make your point. I can think of regulations in the energy business. If you are going to regulate the specifications of deepsea diving for oil and gas development, your public may be five people in the world. There are five engineers who are representing five different drilling firms who know and care about those kinds of things. You can be quite sure that all of those people know exactly, word for word, what the government is proposing.

Mr. Chairman: But they do not get that from the Gazette.

Mr. Thompson: That is one of the ways in which they can get it.

Mr. Chairman: As a practical matter, do they?

Mr. Thompson: What is happening is that even before I see the regulation, even before it vanishes out of the department, in cases like that there will have been discussion among all the interested people.

Mr. Chairman: I am just wondering, frankly, whether there is any value in publishing any of what we are calling here prepublication in the Gazette.

Mr. Thompson: My answer is that if I were a legal adviser to any client, what I would need to have before I could give useful advice is a final commitment about what it is the government proposes to do. The relatively informal process, which always went on and still goes on, would very often not be enough for me. I would like to see chapter and verse to be able to react precisely to the words. That would be true in the example I gave of the deepsea diving, the income tax and any of those matters. There is no doubt you could invent another system other than part I of the Canada Gazette, but we are essentially carrying on a well understood procedure, which is that important federal government notices appear in that form. That includes all kinds of orders but also now includes draft regulations.

Mr. Chairman: I guess I am thinking of all sorts of wild ideas, but I am wondering if it would not be more effective to put a list of the things people should look at on every cable television program. We now have cable TV almost everywhere in the country. Maybe that would be a cheap and relatively effective way of telling people something is happening. At least somebody out there would actually see it, as opposed to it depending on whether you are a big enough organization that you can afford the lawyers or the researchers to spend their time every day flipping through the Gazette. That is more of an editorial comment than a question.

Mr. Thompson: I perfectly understand it, and different publics--I hate the word--can be reached in different ways. If you are dealing, for example, with health and safety issues, it seems to me very important indeed that all the people who might be affected, who indeed might be all the people who might use the stairs in a federal building, should know what it is that is affecting them. But that is not true of my deepsea diving example.

Mr. Chairman: Exactly.

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Mr. Philip: I wonder if I can phrase the question in the way that perhaps Aileen or Alan Redway or Iain Angus might well phrase this. I will give you a rehearsal on the question you will probably get when Ken Dye brings in his report. In the computerized age, why do you turn out a big, thick book like that when, since you have identified the potential clients, you could in fact send them out only those matters of relevance to them, which would save their staff time and save the taxpayers a lot of money, in terms of printing and mailing costs? I see the use of having that big thick book somewhere, perhaps in the parliamentary library or in certain key commercial libraries around the province, but why mail something that thick to people when most of it is irrelevant to their particular industry or issue?

Mr. Thompson: The big thick book we are talking about is the 1988--

Mr. Philip: Yes, and your annual presummary.

Mr. Thompson: OK, and I think the chairman was speaking of part I of the Canada Gazette prepublication. It is plain that there is concern in the committee about the effectiveness of these instruments. I will pass that message on to Tony Campbell, for one. What can I say? I understand exactly what the concern is. I cannot pretend to you that it is my responsibility to decide how the message gets across.

Mr. Chairman: For what it is worth, from what we heard yesterday, you are still miles ahead of where we are in Ontario in terms of distribution, but I very much share the comments of Mr. Philip that it just does not make sense. I, as a member of the Legislature, if there was prepublication--and of course we all get the Ontario Gazette. Frankly, I do not think I or any other member of the Legislature wants to read every last one of them. None of us has the time to do that, let alone the interest and the expertise in every case, so one of the things I hope this committee will give very serious consideration to is the method of having publication, presuming we want prepublication. I guess we would all agree we want it in at least a number of cases. Then the issue is how do we do it and in what way do we distribute it.

Mr. Philip: In fairness, though, to our guests, they have not had their own internal audit yet. They are developing new systems.



Mr. Chairman: It is not meant as a criticism.

Mr. Philip: They are ahead of the times. I think you are going to find kinks in the system. Far be it for us to act as the federal standing committee on public accounts. It is just questions we are struggling with, and I hope you did not take my comments as being critical or as trying to tell you people what you should be doing.

Mr. Thompson: Not at all. I think they are useful comments. Let me tell you something that perhaps is common knowledge to everybody. The business of publicizing federal regulations has had a very short life indeed. It effectively goes back to 1947. Prior to that, orders in council were, in the old tradition, quite secret. The furore was created in 1947 as a result of the Ottawa spy trials, the Gouzenko affair, because in 1945 the government passed an order in council giving itself amazing powers to detain people for essentially as long as the Minister of Justice or the Prime Minister saw fit and giving powers to the Royal Canadian Mounted Police to go into premises where there were any of those people and to search. Once that became known, there was a gigantic reaction which resulted in an order being made in 1947, the title of which was the Statutory Orders and Regulations Order, and that in turn was rolled into the Regulations Act of 1950.

As I say, the essential requirements of those two pieces were the same, and they were to publish orders in council and regulations. There was a significant change by introducing the Statutory Instruments Act in 1971. In only 40 years, we have come from a quite old tradition of secret executive action, so these questions and concerns you have just raised about publication are an effective notice or a baby in a sense. It is moving along quite quickly.

Mr. Callahan: I think the thing too is that if you look at the Canada Gazette and the Ontario Gazette--I am sure there is a Gazette for every other province--it was a simple way of introducing how you would prove something in a court, because the fact that it is published in the Gazette is prima facie evidence that the regulation is in existence.

I guess the second part of it too is that the Canada Gazette and, I am sure, the Ontario Gazette contain absolutely unbelievable things. For instance, if you leave money in the bank and forget about it, I think every five years they print a list of bank accounts where there is money, and if you do not pick it up after a certain period of time, I think the government gets it, as I recall. It is a nice, tidy way of putting it all in one document.

In the final analysis, I suppose the cost to the government of advertising in here as opposed to on cable television or in the local newspaper is probably insignificant. I also note that they do not recover very much. They charge \$62 for 52 weekly issues. You cannot even get my local newspaper for that kind of money, so we are well out of time with that one.

If the purpose is to provide prenotice, then obviously that is an issue that we have to wrestle with in terms of how we do. I think there is a rationale for why they use the Gazette.

Mr. Philip: What is the cost of Hansard? I was just wondering whether--

Mr. Callahan: I do not know it, but you would probably fill page after page and have it clipped on your wall.

Mr. Philip: I was just wondering whether (inaudible) money out of that.

Mr. Chairman: Maybe we can continue this discussion over lunch. Before we break at this time, first of all, I wanted to ask you whether you wanted me to see if the registrar is available either tomorrow afternoon or Thursday afternoon. I had mentioned earlier about having him come back at the end of the two weeks or maybe in April, but we do have some open time spots and if he is available--

Mr. Philip: Is there a revision of our schedule now, since we have made some changes?

Mr. Chairman: The only change that was made from the schedule that is dated March 21 is that at 2 p.m. tomorrow, instead of reviewing the two draft reports, it is a review of materials in camera. At this point, I do not think we have heard back from the Canadian Bar Association--Ontario; in any event, we think they are not available this week anyway.

Mr. Philip: Am I looking at the wrong schedule? I have someone else listed for 2 p.m.

Mr. Chairman: No. That is one that is now out of date. It is one revised March 21, 1988, and it is about to be delivered to you, although I apologize; I thought you already had it yesterday.

I am not really giving any indication one way or another. Do you think it would be useful to have him come back as soon as tomorrow or Thursday, if he is available, which we do not know yet?

Mr. Philip: What are we aiming at in terms of adjournment on Thursday? I have a commitment at 4:30 in my riding. Am I likely to make that commitment?

Mr. Chairman: I am quite flexible. One of the points we talked about yesterday was having an opportunity to discuss as we go along what we are talking about and what we are thinking about, because the membership of this group will turn over, a little bit at least, next week. I think it is a matter of individual judgement for members how long they want to stay on Thursday.

Mr. Callahan: Instead of bringing the registrar back, would it not be more appropriate for counsel or for research to ask those points--they have obviously made a note of those points that came up--and have him respond?

Mr. Chairman: Yes, and speak to the registrar about some of the questions that have come up today.

Mr. Callahan: Rather than bring him all the way back here and perhaps have little or--

Mr. Chairman: All right. We will do it that way. That is a good suggestion. That being the case, Mr. Thompson, you again proved an excellent source of information and opinion and I thank you for an excellent presentation and for your time.

Mr. Thompson: It was a pleasure.

Mr. Chairman: We come back here at two o'clock for Mr. Bernier.

The committee recessed at 12:30 p.m.





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STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

REGULATORY PROCESS

TUESDAY, MARCH 22, 1988

Afternoon Sitting



STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

CHAIRMAN: Fleet, David (High Park-Swansea L)

VICE-CHAIRMAN: Beer, Charles (York North L)

Cleary, John C. (Cornwall L)

Fawcett, Joan M. (Northumberland L)

McCague, George R. (Simcoe West PC)

Pollock, Jim (Hastings-Peterborough PC)

Pouliot, Gilles (Lake Nipigon NDP)

Ruprecht, Tony (Parkdale L)

Smith, David W. (Lambton L)

Sola, John (Mississauga East L)

Swart, Mel (Welland-Thorold NDP)

Substitutions:

Callahan, Robert V. (Brampton South L) for Mr. Beer

Lupusella, Tony (Dovercourt L) for Mr. Ruprecht

Philip, Ed (Etobicoke-Rexdale NDP) for Mr. Swart

Stoner, Norah (Durham West L) for Mrs. Fawcett

Clerk: Manikel, Tannis

Staff:

Kaye, Philip J., Research Officer, Legislative Research Service

Dekany, Andrew C., Legal Counsel

Witnesses:

From the Standing Joint Committee on Regulatory Scrutiny:

Bernier, François, Senior Counsel

Burnhardt, Peter, Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Tuesday, March 22, 1988

The committee resumed at 1:07 p.m. in room 228.

REGULATORY PROCESS  
(continued)

Mr. Chairman: I see a quorum. Perhaps we can get under way.

I have before me a number of documents which I presume are additional exhibits. Sitting across from me are François Bernier and Peter Burnhardt, respectively senior counsel and counsel for the standing joint committee for regulatory scrutiny in Ottawa. Perhaps, gentlemen, we can commence with your making a presentation and then members from the committee will pose what questions they will.

STANDING JOINT COMMITTEE FOR REGULATORY SCRUTINY

Mr. Bernier: For members, I should indicate this is the Bernier part, and this is the other B, Burnhardt, to my right. What we will do is perhaps concentrate on those aspects where the Ottawa experience has some relevance to the list of questions this committee wants to consider.

With the permission of the committee, Mr. Burnhardt might start and give an overview of the actual operation of the committee in terms of the setup, the criteria, when it was established and its manner of working. After that, I may have something to say on parliamentary control in general and some other methods of parliamentary control. Certainly, if members, as we are speaking, want to ask questions as we go, they should not hesitate to do so. We can break off or wait until the end.

Mr. Burnhardt: As Mr. Bernier stated, what I am going to do is simply take a few minutes to give a bit of background on the committee, its establishment, history, mandate and some of the details of the day-to-day type of operation the committee engages in.

In 1969, the special committee on statutory instruments, better known as the MacGuigan committee, recommended the creation of a scrutiny committee to which all regulations made by the crown and by executive agencies would be referred for examination.

This recommendation, along with others, was acted upon by Parliament in 1971, with the passage of the Statutory Instruments Act. Under section 26 of this act, all statutory instruments stand permanently referred to any committee of the House of Commons, of the Senate or of both houses of Parliament established for the purpose of review and scrutiny.

Following the passage of the act, the Senate and the House of Commons provided for the establishment of a joint standing committee to fulfil this mandate. In 1974, its standing joint committee on regulations and other statutory instruments--I should point out that the name has recently been changed to something a little bit more manageable, the standing joint



committee for regulatory scrutiny; slightly less of a mouthful, anyway--began to operate on a regular basis.

The joint committee is made up of four senators and eight members of Parliament. It has traditionally functioned in a nonpartisan manner. For example, this is reflected in the practice that has developed of electing an opposition MP as one of the joint co-chairmen, with the other joint co-chairman being a Senator from the governing party.

Faced with a broad mandate to review and scrutinize statutory instruments, the committee had to determine how it was going to exercise its jurisdiction. In November 1974, the joint committee established a number of criteria to use in its work. These criteria have been revised on several occasions, most recently in 1986, but their fundamental thrust has remained the same in that they deal not with policy or merits of statutory instruments, but with technical matters of form and legality.

At present the joint committee has adopted 13 criteria. I note that many of these parallel the criteria used by your committee. There are, however, several additional, or perhaps more to the point, somewhat differently worded criteria presently in place.

I will just quickly run through these, namely, whether any regulation or other statutory instrument within its reference is not in conformity with the Canadian Charter of Rights and Freedoms or the Canadian Bill of Rights; imposes a charge on public revenues or requires payment to be made to the crown or to any other authority; appears for any reason to infringe the rule of law; trespasses unduly on rights and liberties; makes the rights and liberties of the person unduly dependent on administrative discretion; is not consistent with the rules of natural justice; or makes some unusual or unexpected use of the powers conferred by the enabling legislation.

While the scrutiny criteria are for the committee's own guidance, they have regularly been submitted for the approval of both houses at the beginning of each session of Parliament. In addition to this, since 1979, both houses have renewed an order of reference which authorizes the joint committee to study the means by which Parliament can better oversee the government regulatory process; in particular, to inquire into and report upon appropriate principles and practices to be observed in the drafting of enabling powers, the enactment of statutory instruments, use of delegative powers and subordinate laws by the executive, as well as the role, functions and powers of the standing joint committee itself.

In this connection, I would note that one of the areas that seems to be currently under study by your committee, Mr. Chairman, is the question of whether its examinations or regulatory process should be explicitly authorized in its terms of reference.

To talk about the staff of the committee for a moment, at present the staff consists of four lawyers and two secretaries. Administrative matters associated with the committee are chiefly the joint responsibility of the Senate clerk and the Commons clerk assigned to the committee.

In addition to conducting the initial examination of regulations, counsel are responsible for all communications with what are known as the designated instruments officers. The designated instruments officer is the senior official identified by each department as the committee's contact with that particular department or regulatory agency. Counsel also chase up

correspondence and are responsible for preparation of agendas for committee meetings, making recommendations to the committee, drafting committee reports and preparing briefing materials when the committee hears witnesses.

Since 1974, the joint committee has examined over 14,500 regulations, orders, ordinances and other instruments. Of these, roughly 26 per cent were submitted to the members of the committee with a comment of some sort drawing their attention to a particular feature of the instrument or explaining its background. The great majority of these comments relate to matters such as minor drafting errors, typographical errors, footnoting problems and inconsistencies between the French and the English versions. As an estimate, likely only about five to 10 per cent of comments made relate to substantive objections.

The joint committee has also made 42 reports to the houses in addition to reports of a purely procedural nature. As for the day-to-day operation of the committee, instruments which have been published in the Canada Gazette or which come to the committee's attention by other means are initially examined by two counsel. This is necessary to ensure that both the English and French versions are thoroughly examined. In addition, the second review acts as a confirmation or a check, if you will, of the first review. As can be imagined, the fact that all instruments are published in both official languages adds greatly to the task at hand.

Where any feature of a particular instrument is found to be questionable, the relevant department or other authority is informed of the matter through the designated instruments officer. Once a reply from the department has been received, the instrument and relevant correspondence are placed on an agenda to be dealt with at a meeting of the committee.

We have brought along today several copies of the agenda for the next meeting of the committee, which I believe is April 14. I think they have been passed around. That will perhaps give members a bit of a better idea just how the meetings are set up and structured. The committee meets once every two weeks during the session. No intersessional meetings are held, but the committee has requested that it be empowered to do so.

In many instances, the department's response to the initial letter from counsel, whether by way of explanation, clarification or promise of remedial action, will be acceptable to the committee. Where the response is determined by the committee not to be satisfactory, the matter will be pursued further by counsel up until the point it becomes clear that an impasse has been reached and the remedial action desired by the committee will not be taken.

In these instances, or where promised action is not taken within a reasonable time, the joint chairman and vice-chairman of the committee take the matter up with the responsible minister or agency head.

Mr. Bernier: I am sorry to interrupt you. I should say that what is in the elastic is what members get when they refer to an agenda. They are not separate pieces. There is a bundle with the correspondence, the text of the regulations and--

Mr. Chairman: They are packages.

Mr. Bernier: Yes, it is a package; sorry for interrupting.



Mr. Chairman: When we do not have the clerk here, it is very difficult for us to function.

Mr. Burnhardt: We are at the point now where the joint chairman and vice-chairman have intervened to take the matter up with the responsible minister or agency head in cases where the committee has not received satisfactory replies or action has not been taken. Again, the reply from the minister may or may not satisfy the committee. Often ministers will undertake to carry out remedial action, either by amending or revoking the objection provisions or by introducing statutory changes.

At this point, I just might say that the committee at any particular point in time will have anywhere from 700 to 800 current files. These may be cases where the committee, either through counsel or through the chairman, is pursuing its dialogue with the department to convince them of the errors of their ways or where the actual making of amendments is being monitored after action has been promised.

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Having regard to the number of instruments examined since 1974, it may be thought that the joint committee has made very few reports; as I say, over 14,000 instruments and 42 reports. The explanation is that the committee has traditionally seen its function as being not only one of reporting but also one of securing the actual amendment of a defective instrument. Given this perspective, the making of a report is seen as a last resort.

Finally, as a result of recent reforms to parliamentary procedures, one option that is now open to the joint committee, when it does decide to make a report, is to require the government to table a comprehensive response to the report within 150 days of its being tabled in the House. I should mention this is available to any standing committee of the House now.

In certain cases, this procedure can be extremely useful. For example, in one case the committee was not convinced of the soundness of legal reasoning advanced by the minister. The minister, after being informed of the misgivings of the committee, informed the committee that he considered the matter closed. However, the committee made a report and requested a response, and in that response the government accepted the views of the committee and proposed remedial action.

Mr. Chairman: Was there any change in the minister in the interim?

Mr. Burnhardt: No, I believe not.

Mr. Bernier: I think the explanation there may be that the private correspondence on legal issues from the minister's office does not have perhaps the same status as a response that is tabled in the name of the government. Whereas a minister may be willing to make certain arguments or refuse to accept certain arguments in correspondence with the chairman of the committee, when it comes to preparing a formal document that is to be tabled in the House in the name of the government, the perspective is different. I think that is the explanation in a number of instances where as a result of requesting the tabling of a formal response--

Mr. Callahan: Politics.

Mr. Bernier: Yes, and publicity. Publicity and politics.

Mr. Chairman: How often does that occur?

Mr. Burnhardt: As I say, 42 reports since 1974. The provision allowing the committee to request a substantive response is fairly recent.

Mr. Bernier: The provision was adopted as a result of the Lefebvre and McGrath reports on House of Commons reform. That provision came in, I believe, in 1983 or 1984. Since then, I think in the case of this committee, a formal response has been requested in maybe five or six cases.

Mr. Burnhardt: Perhaps with one or maybe two exceptions, the response has always been in line with what the committee was suggesting or requesting in the course of the background leading up to that point.

Mr. Chairman: They merely have to provide a response.

Mr. Burnhardt: A substantive response.

Mr. Bernier: The standing order calls for a comprehensive response. Of course, that is very much a matter of opinion. Certainly in the House and in the case of other committees, points of orders, I believe, have been raised at times as to how comprehensive the response of the government was. But certainly in the case of the joint committee on regulations we have had no grounds to complain about the procedure. As I say, in terms of getting the result the committee was after, either remedial legislation or a promise to amend regulations, that mechanism has always proved very successful.

Mr. Burnhardt: I suppose now, having gone along to the point where a report has been made to the House, this logically brings us to the disallowance mechanism. At that point, I guess I will turn things back to Mr. Bernier.

Mr. Bernier: There are two points I would like to discuss with the committee. One concerns parliamentary control in the broader sense as opposed to parliamentary scrutiny, which of course affords one method of control, and the question of the criteria that are used. Two of the traditional methods for parliamentary control are the affirmative and negative resolution procedures.

The affirmative resolution procedure, which usually requires that an order or regulation by a minister or by cabinet be tabled in the Legislature and provides that it is not to come into force before being affirmed by resolution or motion of that Legislature, is fairly rare in Ottawa. It is found in individual statutes. A survey of the statutes of Canada, done in 1985, showed there were around 11 statutes only that included an affirmative resolution procedure.

The negative resolution procedure of disallowance, whereby a Legislature or the House, usually in Ottawa, is permitted, once an instrument is made and in force, to annul or rescind the instrument, is found fairly rarely in individual statutes. There are likely around 14 or 15 federal statutes that expressly provide for the procedure.

However, since February 1986 there has been put in place a general disallowance procedure, which I think is the one likely to be of interest to this committee. That procedure has been established in the standing orders of the House of Commons and does not apply in respect of the Senate.



I should make two points before describing the procedures. First, it is not a binding procedure. In a sense, it is consensual or voluntary, whereby the government says to the House in effect, "Should you adopt an order or order us to rescind or revoke a regulation, we will abide." The commitment, of course, is political because there is no legislative foundation to the procedure.

The second point is that at this time it applies, for the same reason, only to regulations made either by the Governor in Council or by a minister of the crown. Regulations made by independent agencies, such as the Canadian Transport Commission or the Canadian Radio-television and Telecommunications Commission, would not be covered by the procedure.

Mr. Chairman: If I might just interrupt for this moment, does that mean that the effect is something akin to or identical to a resolution being passed by the House?

Mr. Callahan: It is a consent.

Mr. Bernier: That is correct. The actual working, and this is a unique feature of it, is that those standing orders or their application can only be initiated by the standing joint committee on regulations and other statutory instruments. If the committee considers that a certain statutory instrument or regulation, or a portion thereof--and that is an important fact; Australia has a problem because its disallowance permits only disallowance of the whole regulation, which of course at times is quite impractical, since there may be only one section that is objectionable.

If the committee considers that any regulation or portion should be disallowed, the committee then makes a report to the House. That report contains a resolution that the instrument in question be disallowed. Once that report is tabled in the Commons, within 15 sitting days the report is deemed to be adopted by the House of Commons and the resolution then becomes an order of the House to the ministry to revoke the regulation.

Before that happens, within those 15 sitting days only a minister of the crown can request a debate on the report. If he does so, the standing orders guarantee--and again I think that is an important point--a one-hour debate, maximum, with a maximum 10-minute intervention time by members, after which a vote must be taken. The vote of course can go either way: either the report is confirmed by the House, in which case we have the order of the House to revoke the regulation, or it is voted down.

Why I said that procedure is unique is that, as you can see, the role of the House in a sense becomes a veto role. Disallowance is not moved by the House in any real sense but really by the joint committee on regulations in that, at most, if a minister does not request a vote then automatically the resolution of the committee becomes an order of the full House.

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Mr. Callahan: Excuse me. Do they move it? Your committees are made up the same as ours, with certain numbers from each party. What if you have a report that has a dissent opinion in it?

Mr. Bernier: That is unlikely to happen. There is the tradition of nonpartisanship on the joint committee. Our committee, no more than yours does, looks at the merits. So it would really be a question of legality, for

example, where the committee considers that the illegality is so important that it warrants disallowance. I would say there is a judgement here as to what--

Mr. Callahan: There would be no efforts by the opposition to embarrass the government?

Mr. Bernier: That would be extremely unlikely. As I say, the committee has functioned for 14 years, and only two formal votes have ever been taken in the committee in all that time. Other than that, the committee has always functioned on a basis of consensus.

Mr. Callahan: Why would there not be a unanimous vote in favour of upholding the report?

Mr. Bernier: Of course, not all members of the House of Commons are members of the committee, nor are all of them lawyers. For example, the committee did exercise its new power in one instance thus far: fruit, vegetable and honey regulations which imposed certain import trade restrictions. The government had accepted, at least two years previously, that the regulations were indeed illegal. The committee was pushing on the minister to formally revoke the regulation in the sense that in so far as they had admitted them to be ultra vires, revocation was fairly formal.

That was not proceeding, and a number of excuses were offered for delaying the formal revocation. The committee thought it would push matters along and use its new power of disallowance. It did so. However, there were certain lobby groups where people who were concerned, for some reason, wanted those regulations to stay on the book.

What happened in the House, of course, is the normal political process of a number of interest groups contacting their members. It was soon realized that should the minister request a debate and should it come to a vote, the committee's report would not be accepted by the House. In that instance, the better part of valour was for the committee to accept that the report be referred back to the committee for further study rather than face a case of the House of Commons of Canada, by implication at least, supporting the application of the illegal regulations by the government.

Mr. Lupusella: You just stated that the committee's decision to revoke is not binding. You brought to our attention the second phase of the procedure, which is the House of Commons has an eventual vote. When the vote has taken place, is the vote considered to be the final will of Parliament and therefore the minister has to revoke a particular regulation?

Mr. Bernier: Again, from a strictly legal point of view, no. The House, otherwise than by legislation, cannot change or repeal existing law. The power is given to make regulations to a minister; only he can revoke. But again, I think it is a matter of political commitment in establishing tradition. Should the House make such an order, or approve a disallowance order, I doubt very much that the government would not take action.

On the other hand, and this is something that the joint committee will be pursuing, ideally, and to avoid this risk, if you have a disallowance procedure it should have some legislative backing so that you do not have to rely on this political undertaking by an existing government. Governments do change, as we all know, and you people better than others. Ideally, what the joint committee would be looking for is to leave the standing orders there but



with provisions in the Statutory Instruments Act saying that when there is such an order that is made or is deemed to have been made by the House, the regulation is automatically revoked by operation of law rather than it being seen as an order directed to cabinet to take whatever measures, but on a voluntary basis.

Mr. Philip: Has there been any consideration given to whether or not there would be a difference between a regulation that involved the expenditure of moneys or the collection of revenue, as the case may be, and a regulation that would not involve the traditional authority of the government, namely, the raising of revenue and expenditure of money?

Mr. Bernier: In terms of the disallowance procedure?

Mr. Philip: Yes, in terms of the disallowance procedure.

Mr. Bernier: Not formally. If I get your idea, what it comes down to is a judgement by members of the committee. For example, we have had examples of regulations that were, in the judgement of the committee, illegal but involved the granting of monetary benefits to certain persons. However much the people who sit on the committee want to be the great defenders of legality, none of them wishes to commit political suicide. As I say, it is matter of judgement here, but I do not see, in circumstances like that, members moving to disallow a regulation that confers benefits on people.

One has to see what it is. The range of regulations open to disallowance is pretty narrow, once you take these kinds of factors into consideration. If you have a program and you know that if you move disallowance of this little piece of subordinate legislation, a whole government program goes down the drain or is put in jeopardy, I think frankly it would be irresponsible then to move disallowance. One is better off pursuing the thing in a traditional way.

Mr. Philip: But supposing there was some regulation that would greatly benefit Petro-Canada and it was a government that was supportive of Petro-Canada, one could see an instance where the opposition, which for ideological or other reasons was against it, could use the disallowance to undermine the policy of the government; or vice versa.

Mr. Bernier: Then, I believe, we go back to the tradition of the committee itself. Given that only the committee has this power under the standing orders, the committee would not proceed to disallowance. As I say, only two votes, and the last one was at least seven years ago, were ever taken in the joint committee on regulations. Irrespective of who is the government, I think the tradition is firmly established of working by consensus. If one cannot get agreement by everyone to a certain course of action, then usually it is not pursued.

Mr. Chairman: Is the composition of the committee that is formed from the House of Commons in the same proportion as other committees are from the House of Commons so that you have the same proportion of the three parties present?

Mr. Bernier: The membership used to be 12 members from the House of Commons. That was reduced to eight recently, I hate to say, I think in part because there was a bit of a problem finding sufficient numbers of members to serve on the scrutiny committee. But the proportion is by and large respected. Of those eight, I think it now is five Conservative members, two Liberals and one New Democratic Party member.

Because of the nature of the work the committee does, its tradition--that has in great part been influenced by the chairmen of the committee in the past, people like Senator Eugene Forsey and Senator Godfrey, whom I believe you will be hearing from. We have had people such as Gordon Fairweather and Perrin Beatty chair this committee. There is really little attention paid in the committee--for example, whereas in other standing committees it is customary that the committee will not start its business without waiting for opposition members to be there, the joint committee, as soon as a quorum is there and both houses are represented, will start its work at its biweekly meetings. Generally, we will not wait.

Mr. Callahan: I want to ask a supplementary. I think you said that if the report, even though it has a resolution in it, is referred to the House and the House passes it, it does not in fact force the minister to withdraw the regulation. I think your comment was that laws are not changed by resolutions of the House. Is this a general comment of law or is this because of your standing orders or the tradition?

Mr. Bernier: I think that would be true generally at law.

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Mr. Callahan: We have processes here whereby the standing committee on public accounts report--the report of the standing committee on the Ombudsman is probably a very significant one because, in fact, the effect is that things do happen in almost all cases; ministers do change their views and so on. Are you saying that is simply an accommodation as opposed to a binding requirement on them?

Mr. Chairman: Just for the record, he nodded a yes.

Mr. Callahan: Any of the reports that are filed in the House, even if they contain recommendations as opposed to legislation, have absolutely no validity other than the fact that they are voted for in the House. They really have no more significance than a private member's resolution.

Mr. Philip: Just for the record, there is significant differences of opinion in the literature on that, and I think that should be noted in the record.

Mr. Callahan: I was just asking the question because I had always thought that what we had heard--and I heard it when I was on the Ombudsman committee--was that that was correct. It is interesting that you make that comment.

Mr. Bernier: It would always be open, as opposed to any Legislature, to provide in a piece of legislation that a report made by such and such a body, or recommendation--

Mr. Callahan: Becomes law.

Mr. Bernier: --become law.

Mr. Chairman: Has the force of law is more apt.

Mr. Bernier: Has the force of law.

Mr. Philip: There is a distinction between your tabling of a report



and the report being debated and passed by the House. I think the argument in this House has been that if the report is in fact passed by the House, whether it is then binding on the minister. That is where the debate is, not that a report in itself tabled in the House is binding on anyone.

Mr. Bernier: But I believe there we are at the level, in a sense, of political accountability. There is the persuasiveness of a recommendation approved by an elected Legislature. Certainly we move a step away from disallowance here between a regular report of a committee, where we merely state an opinion that such and such a regulation is invalid, but stay short of recommending disallowance.

Clearly, with just the report, there is a difference between tabling that report, and it stays there, and the House concurring in the report. Of course, if both Houses would concur in such a report, I think simply in political terms and in terms of our system of government, the pressure on a government to act accordingly is much greater than with a report that has merely been tabled.

Mr. Callahan: So it is a political change versus a legal change is what you are saying.

Mr. Philip: Will the committee, as a way of enforcing its will, call the deputy minister before it to request an answer to why the committee's recommendation is not being implemented? Has this been done?

Mr. Bernier: It has, in point of fact, just last week or the week before, I believe. We had people from the native affairs department, where action was promised and things had not moved along for the last three years, and they were asked to appear to give an explanation. In that case, it proved successful. The departmental people were informed they were to appear at the end of February. They were slated to appear on March 10, and when they did, they announced that they had indeed proposed amendments on March 4. They were very happy to say that had been done.

Mr. Philip: The reason I asked that is that our colleagues in the public accounts committee in Ottawa say their greatest tool, rather than anything they could table in the House, is the very fact that they will tell a deputy minister, "Thank you for your response and we intend to recall you in six weeks to see what progress may have been made."

Mr. Bernier: I think I am aware of the procedures of public accounts to which you refer. The difference would be in terms of the subject matter. If we did it the way they do it, because we deal often with legal matters, we run into a problem right away. Department of Justice people will not appear and argue the law before a committee of Parliament. They consider they are there to advise the crown. So the people we could get in front of us are the deputy ministers, the line people in a department. Here we would be talking law. They are not lawyers, so the dialogue would tend to be a bit short. So we cannot use that appearance, which can be effective, to the extent that a committee like the standing committee on public accounts does, because of that.

Mr. Philip: Public accounts also attracts more publicity or public attention probably than you.

Mr. Bernier: Money generally does, although the committee is looking. I must say that, in the past month or so, a number of times committee members have asked if we could not increase this type of approach, that is,

take the number of piles that have been sitting around waiting for amendments to be made for eight or nine years and have a whole bunch of deputy ministers or assistant deputy ministers appear and explain why it takes 10 years to correct two sections in a regulation.

Mr. Philip: In that category, there will not be a new deputy minister for four months.

Mr. Dekany: What do you see as the future of the disallowance power at the federal level? Do you see it being used more frequently, with more success or, as a result of this last experience, do you see it being less frequently used than it even has been to date?

Mr. Bernier: I would not want to give the wrong impression to this committee. Although I suppose the one instance where we used it to formally invoke the power does not have the appearance of success, it was not a failure either. In a sense, the very fact that a bit of scrambling had to take place to avoid a vote, the very fact that members suddenly on a Wednesday had to show up at one o'clock instead of two o'clock in the House to debate specifically for one hour these regulations or the validity of these regulations--although they eventually did not do so--has produced or put, if you will, a lot of pressure on the minister to introduce validating legislation, which is now being prepared and should be introduced shortly, to validate these regulations and provide authority for them.

I think the way I would answer that is that I would not look at the value of disallowance solely in terms of how often it is invoked. As I said, the range of situations where, in all good judgement and discretion, you can invoke it is fairly narrow. However, the very existence of the mechanism alone produces a beneficial result. Departments know that possibility is there. Of course it does not hurt, if things are moving a bit slowly, to remind departments at times, "Listen, you know there is that procedure and the committee could make a report."

Mr. Dekany: I was going to ask you that as my next question. Do you have a built-in mechanism where, instead of just going ahead and disallowing, you have a preliminary step of formally threatening disallowance and have you ever used that with any success? I understand they have in the Australian system. I understand they have a procedure whereby they threaten disallowance and that brings results without having to go all the way.

Mr. Bernier: I would not want to be on the record as using the word "threat." I do not think the use of powers granted by Parliament amounts to a threat. It can have that effect, however. Certainly, in the case I just mentioned of this appearance by people from the Department of Indian Affairs and Northern Development before the committee, not only had they been asked to appear to explain the delay, but it had been mentioned to them that this was a case where the committee might entertain the notion of moving disallowance. So I think that alone in a way confirms what you were saying.

Mr. Philip: Does the committee list or comment on the principal offenders? In other words, are there certain ministries that are habitually running into trouble? Do they comment in their report, and does this have a therapeutic value to the offending parties?

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Mr. Bernier: It was done at one point. I believe the last time we



did this was in 1983, when the committee published a general report listing all outstanding undertakings in a schedule. I was looking at that list a few months ago. Some of these files are still with the committee, so in terms of the effect it has had I think it is too generalized, because there we are talking some 400 files, possibly, of long-outstanding undertakings.

I do not think the report, unless you request the government's response--that is a nice thing with the government response procedure that is now available. A report is made, it is tabled in the House and it tends to be pretty soon forgotten unless somebody moves concurrence on it.

Mr. Philip: I was thinking more in terms of the number of citations they may have on a particular ministry as compared to other ministries.

Mr. Bernier: I do not think in those terms the committee would consider doing that. Myself, I would think it unfair in the sense that you have departments, for example the Department of Transport, where certainly I can say, "Oh, my God, don't you have a number of outstanding files here." On the other hand, the volume of legislation that is administered by that department is tremendous. It is normal to expect that there will be more instances of nonjustified delay on their part when one looks at, as I say, the volume of legislation they administer.

The closest we have come--maybe Senator Godfrey, whom I understand you will be hearing from tomorrow, can give you a suggestion he made before he took his leave of the Senate. It was to create the John Godfrey award, which he suggested we could award every year. I think he had one award category that was for the longest unjustified delay. I suggest that another award be given for the most ingenious excuse to do nothing. That is the closest, as I say. That has not really been picked up by the committee. We have yet to order the little trophies.

Mr. Philip: We were thinking of awarding a student grant to the cabinet minister who undertakes the most studies.

Mr. Callahan: You have just heard this gentleman say this is a nonpartisan committee, Ed.

Mr. Philip: I did not mention him.

Mr. Callahan: I gather you are finished your presentation, because this deals with some of the material that you gave us.

Mr. Bernier: There are two more things I think I might have mentioned in terms of parliamentary control in the broader sense. One is a review of enabling clauses of bills. I think that is something your committee wanted to look at. Certainly in terms of the control of the growth of delegated legislation, one of the most sensible ways of doing it would seem to be at the time of the granting the power to make regulations.

If the Ontario Legislature is anything like Ottawa, I suspect that generally, when committees or legislators look at bills, fairly little attention is paid to enabling clauses. That is a notion that is under active consideration in Ottawa, where the joint committee on regulations would be empowered to look at enabling clauses and draw the attention of the House and of the Senate to particular powers which it feels should not be given.

Another thing that I think would greatly enhance accountability in terms

of subordinate legislation would be if draft regulations were more often tabled together with the bill, of course where that is feasible. It is not always feasible. However, I think in a number of instances, when a bill is introduced, it is skeletal legislation whose application will mostly depend on regulations. Departments will have a fair idea of how they want to regulate, and I think if any legislature or jurisdiction were to have in place a policy that encourages tabling of that draft subordinate legislation with the bill, it vastly increases the control of the legislators over the end product. They can then look right here and there. Are these things that should be in the regulations? Should this not be in the primary legislation itself? They have a better idea of what the powers will be used for. I think those are two, as I say, broader measures that would tend to improve parliamentary control.

Mr. Callahan: We were told this morning by Mr. Thompson that when the regulation is drafted it refers to the specific section and subsection of the act that gives it the authority. I may be wrong but my impression was that he said that is done but it is not mandatory. I note in the directive respecting submissions to the Governor in Council, at page 3, under (b), citing authority, it says, "Recommendations must cite the exact statutory authority relied upon, identifying the act or acts, section or sections and subsections, if applicable."

Is it more accurate to say that it must be there?

Mr. Bernier: Probably what Richard meant is that it is not legally required but, of course, this is what you have in hand there. I brought copies of the directive issued by the Privy Council office concerning the format of regulations. It is an internal executive document. It is not law, but certainly departments are expected to prepare their regulations in accordance with that.

Mr. Callahan: OK. What you are saying is that he was saying this document--

Mr. Bernier: No consequences flow from a failure to do so.

Mr. Callahan: This is just the rules and they might not accept the draft if it did not have that. There was some concern by Mr. Philip, and maybe we can get a second opinion on this, that if they cited the wrong section or wrong subsection, it would have an impact on the legality of the regulation.

Mr. Bernier: On that, I must say that the case law I have had access to--there are few cases that deal with that, but there are a few--by and large, I have yet to see--I suppose except for one case, the Bermuda case, I believe--

Mr. Chairman: Which case?

Mr. Bernier: Bermuda case. I could find it and maybe send it to Mr. Dekany or to your clerk. Generally, misrecital of authority will not invalidate a regulation.

Mr. Callahan: As long as, within the act itself, the power is there. OK. That is what he said.

Mr. Kaye: I just want to ask a few questions about the disallowance power. I notice that in the standing order that gives the committee the power to introduce a report with a resolution in favour of disallowance, it says



that if the report is concurred in, then the resolution becomes an order of the House to the ministry to rescind the regulation. What if the regulation was issued by the cabinet? Is there a problem with the use of the word "ministry" and also the use of the word "rescind" as opposed to "revoke?"

Mr. Bernier: On the first point, I think if you look at the French version of standing order 44 you will find "cabinet" there. This is a portion--the copy you have--of those standing orders that has been amended recently, December 18, 1987. There was a lot of misuse of language. You pointed out "rescind," where really the word used should be "revoke." Those were cleaning-up things.

The use of "ministry"--the reference to "an order of this House to the ministry to rescind one specified regulation...which the ministry has the authority to rescind," in a sense is meaningless. Certainly at the federal level, neither the ministry nor the cabinet ever has the power to revoke. It is the Governor General in Council with the advice of the cabinet or a minister.

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One recommendation of the standing committee on elections privileges and procedure when at the request of our committee it looked into changes to these standing orders to clean them up was to replace the reference to ministry with a reference to Governor in Council or a minister of the crown. The Privy Council office objected to that.

I take it their objection is a sort of two-pronged objection. One was a matter of constitutional propriety where they felt that a reference to an order to the Governor in Council would be improper as the House should not be seen to order the sovereign's representative around. The other reason they wanted to keep "ministry" is to emphasize this idea that these standing orders represent a voluntary acceptance by government, a political acceptance that put in this procedure, the idea that, "Should you issue such an order, we undertake in terms of political commitment vis-à-vis the House to revoke the order." It was felt that to put in a reference to the Governor in Council or minister would sort of give it a sort of legal varnish, if you will, which they did not want.

Mr. Smith: Can I ask a supplementary?

Mr. Chairman: Yes.

Mr. Smith: Would the Governor General ever not do what the minister or cabinet asked her to do? Can somebody persuade the Governor General? Does the Privy Council have more power than the cabinet?

Mr. Bernier: I think that practically and without going into constitutional history, in terms of regulation, certainly the regulation or orders in council are first approved by the special committee of cabinet--I understand you have an equivalent committee in Ontario--but the list is sent to Rideau Hall. I have never heard of the Governor General refusing to put her signature to an order in council.

Mr. Chairman: There was a recent case where the Governor General refused to sign a bill, I think it was--that had a typographical error in it and as a result the legislation failed to be dealt with by Parliament within the sitting of Parliament. It was of some considerable controversy because it

dealt with the drug legislation that has been fairly hotly contested in Parliament for the last two or three years. If you want to know the context in which something is refused, that is--

Mr. Smith: But it was only a technicality; there was nothing in the content of the--

Mr. Chairman: I do not know if every critic concurred in that view, but that was the official reason that, at least, I heard about. Before we go on any further I just wanted to say that perhaps we will have Mr. Kaye arrange for the latest version of the federal standing orders to be distributed at some point.

Mr. Kaye: Actually, they were distributed yesterday in a memo I prepared for the committee. It is dated March 10, and it is entitled, Disallowance of Regulations. At the back, Appendix A is entitled, Standing Orders of the House of Commons, Chapter V. What I have got included in chapter V is an up-to-date version of the standing orders dealing with disallowance with the amendments of last December included in. That explains why the right margin is jagged, because of the cut-and-paste approach that was necessary to incorporate the December amendment with the original version.

Mr. Bernier: Mr. Chairman, if it will not be abusing your committee's research work, I would be very happy to get a copy of this. I must say that Ottawa--the House of Commons--has yet to do a reprint of the standing orders. If Mr. Kaye could give me a copy of his updated version, I would be very grateful.

Mr. Kaye: I was waiting for a consolidation from Ottawa, but either the hearings would have had to be postponed or this was necessary.

Mr. Chairman: OK. I am sorry, there was a supplementary question.

Mr. Callahan: I just wanted to get one other item. This is just for my own personal curiosity. At page 14 of the directives, under paragraph 7, down about the second paragraph, it says, "These provisions entitle any person, upon payment of the described fee, to inspect or obtain copies of any such statutory instrument, other than those excluded by the regulations." Are there instances of regulations that contain within them a provision that will disallow them from being made available to the public?

Mr. Bernier: It is something that I note, by the way, is absent from the Ontario Regulations Act. The Statutory Instruments Act guarantees the public a right of access to original copies of orders in council or regulations and the right to obtain copies directly in the statute. The governing council is empowered to make regulations exempting certain categories of regulations or orders in council from that right, on the basis of national defence, international security, federal-provincial relations, the type of exemptions you find in the Access to Information Act.

I suppose you may have, for example, regulations governing the Canadian Security Intelligence Service that are made. Access to those would be precluded. They are exempted from publication and they are exempted from the access provisions.

Mr. Callahan: So it is basically on national security.

Mr. Bernier: National security, federal-provincial--



Mr. Philip: Are they reviewed by the committee?

Mr. Bernier: No, because, similarly, section 26 of the Statutory Instruments Act, which gives the committee its statutory reference, excludes all regulations that are excluded by regulation.

Mr. Philip: But the Auditor General can have access to them, can he not?

Mr. Bernier: What the Auditor General can have access to there, frankly, I do not know that.

Mr. Philip: I think the Auditor General could in fact pass comment, but--

Mr. Bernier: If he cannot get the Petrocan documents, I am not sure whether it is going to be different with CSIS documents.

Mr. Philip: It is not yet proven that he is not going to have access to Petrocan documents.

Mr. Chairman: You may be taking us far afield here.

Mr. Philip: I will bet on Ken Dye against the government any day and I will give you double money.

Mr. Bernier: You may have longer tenure.

Mr. Chairman: Do you have any further questions, Mr. Dekany?

Mr. Dekany: In your opinion, Mr. Bernier, do you see any role for a scrutiny committee of the Legislature or Parliament for conducting a review of the merits of regulations, either a complete review or on a limited basis?

Mr. Bernier: I think certainly members of this committee will be aware that traditionally, of course, scrutiny committees, it has always been said, should not go into merits. Two reasons were traditionally given. One is that, otherwise, maintaining nonpartisanship would become extremely difficult. The other reason is lack of expertise, and that includes staff, in that if one goes into merits and decides, for example, that on these regulations in occupational health and safety, the best way of governing the area--it is impossible for a committee to get staff that can answer or make recommendations over the job range covered by regulations.

The other rationale, nonpartisanship, I am not sure holds. I am looking at a committee like the federal committee, and today the nonpartisanship of that committee, that rule, is so ingrained in the committee that the committee could deal to an extent with merits and do so on a nonpartisan basis, I believe. But we still face this other problem here of expertise and how far you go.

One thing I should mention is that, again as a result of recent changes to the procedures of the House in Ottawa, standing committees now have the ability to review regulations on the merits. So that question, in so far as the joint committee on regulations is concerned, has lost some of its currency, because all standing committees are entitled to review and examine, of their own motion without particular reference from the House, all the

statute law relating to the departments assigned to them.

For example, the committee on employment and immigration could very well look and undertake a study of the immigration regulations from the policy point of view and make a report.

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Mr. Chairman: As a practical matter, are they doing that? Are they examining on their own initiative regulations for pieces of legislation that are not necessarily before them in the sense that there is a new amendment to an existing act or a brand new act?

Mr. Bernier: The employment and immigration committee, which I just mentioned, did it, but in a peripheral way. Recently, they were looking, I understand, at the refugee program and immigration program. In that sense, they did look at what the subordinate legislation provides for. But other than that, no, I am not aware of any committee, let us say, having gone and taken a piece of subordinate legislation, sat down and said: "OK, we are going to look. Is this necessary now?"

Mr. Callahan: This morning, Mr. Campbell, the assistant deputy minister, indicated to us that as a result of the changes that have taken place, there have been opportunities to cut down on costs in terms of programs that might be implemented as a result of regulations as they formally went forward without any scrutiny. I notice that under the directive any regulation which would anticipate the expenditure of money would first have to go before Treasury Board and receive approval. Is that what Mr. Campbell was talking about or has that always been the case? If that is the case, why would there be any reduction, as Mr. Campbell said, in terms of the cost of this new procedure?

Mr. Bernier: I did not hear Mr. Campbell. Certainly, one of the aims of the federal government's regulatory reform strategy is to reduce the cost, first to the economy, which was evaluated by the Nielsen task force at \$30 billion of federal regulation, and the direct cost to the government, which again the Nielsen task force had evaluated at \$3 billion. This requirement certainly is nothing new and is still in existence. Treasury Board is the approving authority for anything that would involve expenditure.

What he may be referring to is that there is somewhat less regulation. Maybe that is what he was referring to. The cost has gone down.

Mr. Callahan: What he was talking about then, I suppose, was less regulation out in the private sector, in terms of having to comply with those regulations. That is probably part of the Nielsen report, and the other part would be the in-house cost of having to--

Mr. Bernier: Yes, the direct cost.

Mr. Callahan: --read through all these regulations, and perhaps--

Mr. Bernier: Publications, staff.

Mr. Callahan: --many of them would not have gone forward.

Mr. McCague: I am not sure exactly what was said this morning, but the problem I think was being addressed was that you can put your regulations



one by one before the Treasury Board and it can rule on the particular costs of the regulation that is before it. I think what he was referring to was the fact that when they do print the forecast of regulations to be done in the coming year, it does then give Treasury Board the opportunity to look at the whole scope of things and maybe put a price tag on the whole cost of regulation, rather than ad hocing it from week to week or whatever the case may be.

Mr. Callahan: Apparently, you cannot do that, at least according to--

Mr. McCague: You cannot do what?

Mr. Callahan: You cannot put them together as a package.

Mr. McCague: But the fat publication we have here is the plan for the coming year. That is all I am referring to. Treasury Board can look at that plan for the coming year and forecast what the cost of regulation is going to be for that particular year, which has some sobering effect on what it does.

Mr. Callahan: But the directive itself says that a regulation cannot even be put forward where it has financial implications unless it is specifically approved by Treasury Board, so I presume it approves each one of them as they come forward.

Mr. Chairman: Why do we not ask Mr. Bernier?

Mr. Bernier: That is why my answer would likely be we are at two different stages here. I think what both members are saying is right, that there is this overall at the beginning of the year. What the directive refers to is the text of the actual regulation. Of course, the regulatory plan gives only a description of what we intend to do. There is not an actual text there, a legal text that involves expenditure of money, so there is that part.

When a department gets to the actual regulation and has the actual draft, it then has to go to Treasury Board and get the formal approval of the board.

Mr. Kaye: With respect to the disallowance powers, I was wondering what effect this power has had on the perception of the federal regulations committee on the part of members of the House of Commons in general? The reason I asked that question is that there was a study prepared for the McGrath committee by Eugene Forsey and Graham Eglington, who will be appearing before this committee tomorrow.

In that study, they said: "We readily admit that members are unlikely to interest themselves in delegated legislation, if they have no power over it. That is simply human nature and is reflected in the lack of interest in the standing joint committee on regulations and other statutory instruments on the part of members and in the lack of respect for it on the part of ministers and civil servants. It is all the more important then that Parliament should have the general power of disallowance over all delegated legislation to be exercised for any reason, whether going to the policy of the legislation or its form."

My question really is, to what extent were Eugene Forsey and Graham Eglington accurate in the perception that giving the committee a disallowance power changed the perception of the committee's role on the part of members,

realizing that they are speaking of the power to disallow, not only on technical grounds but on grounds of merit.

Mr. Bernier: I think their statement as a prediction, to my mind, would have more accuracy if we are talking merit. On the technical side, certainly no member of the joint committee on regulations detected a great upsurge of interest on the part of the other 300 and some members of the House of Commons in the work of the committee since we have been given the power of disallowance.

Mr. Chairman: In other words, nobody cared about it before and nobody cared about it after? I will not insist on an answer.

Mr. Dekaney: One of your criteria is whether regulations comply with the Canadian Charter of Rights and Freedoms. How frequently do you come across contraventions of the charter?

Mr. Bernier: Very infrequently. There are cases, but they are rare, although I think the criteria deserves to be there. It seems to me that, if the committee has the power to condemn the regulation for being ultra vires the statute, all the more so should it have the power to condemn it for being ultra vires the Constitution. The only case we have had involved the pilotage regulations where access to a certain class of licences was restricted on the basis of age. Age was made a criterion, the overall purpose of the scheme being to reduce the more valuable pilotage licence to older people. As soon as that was drawn to the attention of the department, they agreed to amend the regulations. I think that is the only case that I have ever come across.

Mr. Callahan: May I have a supplementary on that? Is it considered, when you do that, that we have so little precedent really to go on in terms of the charter, and also because of section 1 and section 33--

Mr. Bernier: I suppose what I should have answered was that obvious breaches of the charter are infrequent. There are certainly a number of instances where one suspects that could be a charter case or there is a charter argument, but I think, as you just said, the lack of any jurisprudence at this time makes it extremely difficult for a committee to say, with any sort of great degree of decision, "This is a breach of the charter." At best, in our opinion, it is a breach of the charter, but I do not think that will change, even with more case law. I think it is very doubtful. If the case law is so precise and if it is so obvious that it is a breach of the charter, the regulation would likely not be made in the first place or would not pass vetting by the Privy Council Office, the Department of Justice; so it would never appear on the books.

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Mr. Callahan: I hate to keep harping on this. When I chaired this committee, I seriously considered that the charter should be like that, but I am wondering if that is the reason Quebec tells us not to touch those issues, that what you are really doing is interfering with the power of the government or the executive to make laws, that you are actually passing a legal opinion upon those, rather than the courts, which should really be passing the legal opinion on them.

Mr. Bernier: That kind of argument does not relate only to the charter. With due respect, that is a type of traditional argument that has been made against parliamentary scrutiny committees for ever. The federal



committee for years was in running battle with reactionary elements of the Department of Justice who insisted that the committee should not have as a criterion conformity with the enabling statute, that in doing so parliamentarians were usurping a function of the courts to say whether a regulation was valid or not. Personally, I think that is poppycock.

Members of the Legislature have delegated certain law-making powers. Certainly, they have the right to keep the delegates accountable. As I say, that type of argument can then be extended to say there should be no scrutiny committee at all, because if somebody has a complaint, it is not up to a scrutiny committee to say it is not valid or trespasses on rights and liberties; let a court do it. There is a cost to that. Of course, in a court you need a litigant. In a way, I think that if legislatures, through a committee, can save potential litigants an amount of money in having to go to the court process to find a regulation is invalid and remove it from the books, all the better.

Mr. Callahan: I do not want to prolong this, but in a clear-cut case when we are dealing with the charter, the charter is really so uncharted at the moment that to do that what you are doing is really telling a government that maybe it wants to enact a policy that a committee, such as ours, would be striking down. I accept the fact that they have to take legal advice from their legal people as to whether it is a blatant situation that violates the charter, but where it is not blatant, then what this does is give the power to the committee, albeit a tenuous one as you have explained, of disallowance to prevent the policy, probably on a nonpartisan basis, as you say, and with good intentions. They may very well be frustrating the putting in action of a policy that is very important to the government.

Mr. Bernier: There is the case if one is not referring to disallowance. Surely it does not impede government if a committee of the Legislature states that, in its judgement, in its opinion--and it is admittedly a subjective matter of judgement on the part of members of that committee--it feels this regulation contravenes the charter. The matter does not go further than that.

If, because of a perceived infringement of the charter, that committee decides to move disallowance, again, depending on the mechanism that is chosen, it is not guaranteed that the motion goes through. The members of that committee, for just what you mentioned, I suspect may not move disallowance in a case like that, precisely because it is the charter. If that is the sole ground of objection, I think a prudent committee would not recommend disallowance in a case where it is not obvious and where it is very much a matter of opinion, but rather would choose to simply make a report or draw the matter to the attention of the Legislature.

Mr. McCague: You mentioned earlier about the Governor General signing things as a matter of course. I think it is a fact that in our case the Lieutenant Governor can refuse to sign something for whatever reason it may be, there may be a conflict in certain cases. I just thought that members who are new to the Legislature here should know that it is not necessarily an automatic thing. There have been cases, both for conflict and for other reasons, in which a Lieutenant Governor has refused to sign something. There is an out on that. The other signer in the Ontario Legislature is the Chief Justice, Howland in this case, who sits in the absence of the Lieutenant Governor, or is his alternate. They could be signed in that way, too, if there were a conflict. If you are here for five years, an LG, and you sign 8,000 orders in council, the chances of running into a conflict are reasonable.

Mr. Bernier: I suppose this would be the greater argument in Ontario, if the situation you describe is correct, to give a legislative foundation to any disallowance procedures to avoid this type of situation.

Mr. Dekany: In some jurisdictions recently, scrutiny committees have been receiving submissions or are empowered to receive submissions from members of the public who have complaints about particular regulations. Does your committee entertain submissions from the public where there are problems with regulations?

Mr. Bernier: Certainly any committee has that power. The committee has never made any effort to encourage this type of exercise. By and large, the nature of the mandate of the committee does not really lend itself--what happens is that when the complaints are received, more often than not it turns out to be outside the mandate of the committee, or given the criteria the committee has given itself, it will not deal with them. Generally, no, I would say this is not a practice the committee follows nor is it a practice it has encouraged.

Mr. Dekany: How frequently does your committee sit to review regulations?

Mr. Bernier: Every two weeks.

Mr. Chairman: How many times do you end up meeting in a year?

Mr. Burnhardt: I think we have statistics on that somewhere.

Mr. Bernier: We keep statistics on a sessional basis. It depends on adjournments, elections, a number of other factors. This session, for example, which started in 1985-86, somewhere in there, I believe from winter 1986, the committee in the current session to now has had 23 meetings. By and large, whenever Parliament is in session, one can count on a regular biweekly meeting.

Interjection.

Mr. Bernier: No.

Mr. Chairman: Does the committee sit between sessions at all?

Mr. Bernier: The committee does not have the power. I know this is something your committee is interested in. The committee has requested that it be authorized to do this. I think there is a question here between parliamentary proceduralists and lawyers as to whether this requires a bill or whether Houses can empower committees to sit after a session, where the House itself has stopped sitting. It would be useful. What the committee does do, however, if we are merely talking about adjournments as opposed to prorogation, is that usually during the summer adjournment the committee will meet at least once, perhaps some time in August or so, to clear up some of the backlog.

Mr. Chairman: Is that with the express permission of the House or does it have that power?

Mr. Bernier: That the committee has, as long as it is merely an adjournment as opposed to prorogation or dissolution. That the committee can do on its own.



Mr. Chairman: That is a greater flexibility than this committee has, unless we get permission from the House. Has the fixed schedule of the Commons assisted?

Mr. Bernier: Yes, by and large, I think that for this committee and for MPs generally, the new scheduling is a great help. It is a great help in managing the work of the committee because you know when you can expect to have the committee sitting. You can manage and predict the work a whole lot better. Mind you, that is when the new schedule is adhered to. There have been a number of breaches even after the new parliamentary calendar has been adopted.

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Mr. Chairman: They just cannot break their bad habits. Any further questions?

Mr. Dekany: Has consideration been given to having a system whereby ministries would be required to respond within a specific time to the recommendations of the committee? I am not talking about disallowance, but just about getting a response.

Mr. Bernier: That falls into what Mr. Burnhardt was mentioning. If we are talking in terms of correspondence at our level, from counsel to the DIO, the designated instruments officer, if we are not getting a response, usually the next step after two or three chase-ups is that we will have the chairman write to the minister and say, "Could you please ensure that a reply is received?"

Ultimately, as the mechanism to do that if there is an absolute failure, we now have, as Mr. Burnhardt mentioned, the opportunity of standing order 99: to table a report and formally request the government to table a response within 150 days. Then if a response is not tabled by the government, that becomes a point of order.

Mr. Philip: That becomes academic, though, because the regulation itself may have distributed millions of dollars or something like that under the program. By that time then, by the end of the 150 days, all the money has been spent anyway, even if inappropriately.

Mr. Bernier: That could possibly happen, but I suppose it is in the nature of ex post facto review.

Mr. Philip: Yes.

Mr. Bernier: By the time the committee gets around to examining regulations, because of its schedule, it could well be that regulation is spent as well.

Mr. Philip: But 150 days sounds like an awfully long time.

Mr. Bernier: It used to be 120 days for government response, but I guess they were finding it difficult to prepare their reply within that time. It has been extended recently to 150.

Mr. Chairman: Are there any further questions?

Mr. Kaye: I just have one question about the mandate of the

committee. How do you feel about the committee expanding its mandate in Ottawa, and possibly here as well, so that it reviews not only regulations but also policy directives? That suggestion was raised a while ago by a Professor Mullan of Queen's University.

Mr. Bernier: In point of fact, it was raised even earlier than that, at the MacGuigan committee in 1969. Its recommendations at the time, which were in part followed by introduction of the Statutory Instruments Act, were that policy guidelines, directives, that whole mass we refer to generally as quasi law, be subject to scrutiny.

To be honest, I am of two minds on this. If you promise me an increase in staff of five more lawyers, I would say: "Great. Fine. Let us do it." Aside from that, I wonder. Although ideally it should be possible to formally look at these documents, is it practical?

If we look at the Ottawa committee, for example, we now review in a year something close to 1,000 amendments in two official languages. Assuming the committee does get the reference it is seeking for a referral of enabling clauses of bills, we would then have to look at enabling clauses of bills to get that whole mass of immigration manual directives, guidelines from departments. I am not sure a committee can logistically and realistically handle that without a massive staff.

I would add that policy directives generally will be tied to regulations. Although section 26 of the act refers to statutory instruments and the review of statutory instruments, the committee has never been shy to step a bit outside a strict interpretation of its mandate. If it came to the attention of the committee that there was a policy directive it felt was inappropriate or should be a regulation as opposed to being merely a directive, which is why those referrals were recommended by the MacGuigan committee, then the committee could very well say: "Substantively, we consider this directive to be a regulation. Look at this. It wasn't registered or it wasn't formally enacted. There's something wrong here," and treat it as a de facto statutory instrument. That happened in one case where the committee had no hesitation in doing that.

As well, as Mr. Burnhardt mentioned earlier, the committee does have a general order of reference which has been renewed every session since 1980, empowering it to look into the regulatory process. That is very general. I think quite a few things can fit in that.

Mr. Dekany: Does the committee always follow the recommendations of its counsel or do you find the committee members take an independent role and assess the opinion counsel gives them and make up their own minds?

Mr. Bernier: I would like to say they usually do, and I think with good reason, because recommendations of counsel are usually right. I say this in all seriousness. In a sense, as Mr. Burnhardt mentioned, this is one reason we have two people review statutory instruments. If we have any doubt, if there are sufficient doubts raised between the two, quite often we will not recommend to the committee that it object or we will not raise an objection.

We are very conscious of the fact that there is this committee made up of members of the Legislature and this whole machinery of government on the other side, and you do not want committee members to be made fools of, so one tends to be careful.



One is also aware, after time, after years of doing this, of what the views of members are. What are the traditions of the committee? What has it objected to in the past? All this being said, generally I would say 90 per cent of the time, our recommendations or suggestions, when they are asked for, are followed. It certainly does happen in a number of instances that a member who has knowledge in a particular area, whether it is agriculture or whatever, raises new considerations and the committee decides not to pursue the issue.

Mr. Chairman: Are there any further questions from any member of the committee?

Mr. Lupusella: I have a final question about the relationship between counsel and the joint committee, what kind of relationship exists and how the committee utilizes the resources of the counsel.

Mr. Bernier: There are, as mentioned previously, four of us. The committee has its own offices. We all work on a full-time basis. I suppose the actual working relationship, aside from the meetings or where we will sit, where your own counsel is sitting, is usually with the chairman to a great extent, on the administration and what have you. There are things that require quick decisions. We will deal with the joint chairmen. It is considered that once they give the OK to--

Mr. Lupusella: Actually, you will sit with the committee.

Mr. Bernier: Yes, we do. It is the same setup you have here, where Mr. Dekany is sitting. At a meeting, we will be on the right-hand side, although, for some reason, you reverse directions in Ontario. We would be to the right of the chairman. The clerk sits to his left. For the actual material--there is the example of the agenda that was distributed to you--the chairman will read out an item. Usually one of us, who is responsible for that file, will summarize the correspondence, the objection that was made and the reply from the department, and make a recommendation as to further action if that is required.

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Mr. Lupusella: There is one counsel sitting at the committee stage, is there not?

Mr. Bernier: We had to change. I must say that previously there were, until fairly recently, only two counsel. We had a dramatic staff increase to four as a result of a report by Price Waterhouse. That is a doubling of our staff. The practice used to be that two counsel would go and each would be responsible for presentation of the file he had prepared to answer the correspondence with the departments. Now, with four people, we have changed things around a bit. I will be there at each meeting as general counsel and then there will be a rotation of the three other counsel from meeting to meeting.

Mr. Smith: I just want a clarification. The more I listen here--I thought you made a statement, and it is a while ago now, that this committee had eight members. Are we talking about another committee now or are we talking about the joint committee? There would be some from the Senate and some from the Commons.

Mr. Burnhardt: There are eight MPs. In addition to that, there are four senators. So the total membership is 12.

Mr. Smith: Four senators on top of that? OK. Thank you.

Mr. Chairman: I think that concludes all the questions. You have certainly been peppered from all sides at various times this afternoon, Mr. Bernier and Mr. Burnhardt. I would like to thank you very much for an excellent and wide-ranging exposition of the Ottawa position, as well as the offering of your proposals and your opinions. It really was excellent. On behalf of everybody here, thank you very much.

#### ORGANIZATION

Mr. Chairman: I guess I should tell the committee that we do have one piece of good news with respect to people coming before us on Wednesday, March 30. You may want to mark up your agendas. At 4 p.m. on Wednesday, March 30, we have representation on behalf of the Canadian Bar Association.

Interjection: At 4 p.m.?

Mr. Chairman: At 4 p.m.; page 3 of the agenda for those who are slow getting to it; Hank Intven and Ian Blue.

Is there any desire on the part of any member of the committee to suggest some direction we ought to go in, some witness we ought to have whom we do not have listed? You do not have to tell me now. I am just raising it with everybody here. I am certainly open to any suggestions about some aspect we either have dealt with, but perhaps not as much as you would like, or something we have not considered if it does not appear to be coming up on the agenda.

Mr. Callahan: Could I inquire about your agenda on Wednesday. Is it still that in the afternoon, in the light of the absence of the CBA, that you are going to sit?

Mr. Chairman: I am proposing to sit tomorrow afternoon unless the committee tells me it does not want to.

Mr. Callahan: I do not know. I am just suggesting that it seems in line with what my colleague said that we should put some time together to bring an update of the facts. I am wondering if it is not more appropriate to do that on Thursday in the time slot that we have.

Mr. Chairman: I frankly do not know if in one afternoon we are going to get through all the stuff we will have heard by the end of tomorrow in terms of the substantive issues. We will have had at least some information on, I think, every substantive issue we are going to deal with. We certainly will not have heard everything because there is a completely different perspective that is going to start to pop up next week. I do not imagine we are going to come to a conclusion instantly. If we do, that is wonderful.

Mr. McCague: I do not know. I have not read everything that is here and there seems to be quite a bit of it, but have we, as members of the committee, had a review yet of what the present system is?

There is a whole system outside of Mr. Yurkow. There is the cabinet committee, what cabinet will tell you it does, and orders in council--not that orders in council are a part of what we do, but it is my understanding that all the orders in council, unless there is some express authority for their retention, are posted every week up on the third or fourth floor. I have been



here for almost 14 years and I have never gone up to see if they are there, but I hear they are there.

Mr. Callahan: They are not on the fourth floor, I can tell you that.

Mr. Chairman: I walked by them the other day, actually. There is a big thick pile of order-in-council appointments on the third floor.

Mr. McCague: Am I right in saying that I do not believe we have had a review yet of the system as it currently is? We have had the one part of it from the registrar.

Mr. Chairman: I think it is partially true what you are suggesting. In the materials that were provided in November, there were two articles in particular that cover literally the whole of the system. They are a little bit dated in the sense of maybe being three years old, but they are pretty accurate. That sets out the whole of the process as it goes through. I do not have the list of that with me now, but I can certainly provide that to direct any member's attention to it.

Mr. McCague: Is it then your intention that Mr. Sorbara is going to give us all that information?

Mr. Chairman: I think he intended to provide some input to the committee on the topic of the cabinet subcommittee. Currently, the cabinet subcommittee is composed of himself as the chairman and other cabinet ministers, a vice-chairman and six or eight back-bench MPPs. I served there for two meetings, and then as a consequence of being appointed to this committee--

Mr. Callahan: Can you describe the room for us so we know what it looks like inside? Do they serve lunch?

Mr. Chairman: --I ended up resigning from that subcommittee in order to avoid a conflict.

Mr. McCague: Was that under duress or not?

Mr. Chairman: No duress. Some regrets, but no duress. Consequently, the object would be to have him come, if we can get him, if the schedule permits, to address that aspect.

Mr. McCague: I just wondered if there is a civil servant around who can explain it to us.

Mr. Chairman: One of the suggestions I have made to Mr. Dekany and Mr. Kaye was that we should see if we can locate somebody from Management Board. I cannot make a commitment to that, but when it came up in the context of the things this morning, it occurred to me that somebody from Management Board might be handy. Frankly, I do not know of anybody who is a civil servant, other than the registrar, whom we have had, who can sit down and tell you how the whole system is put together. We are not far away from the kind of scenario that Ottawa was in before they had a reform. There is just nobody out there who is in charge of looking at the whole issue.

Mr. Philip: Management Board will spend two hours telling you what they do not have authority to do.

Mr. Chairman: You know more about Management Board than I do in all likelihood.

Mr. Philip: Believe me, it is not the comptroller general.

Mr. Callahan: How about one of our back-bench members who is on there? They have obviously sat on it for four or five months now.

Mr. Philip: It is the biggest waste of money that the taxpayers ever spent.

Mr. Chairman: If we can get the minister, I would rather have the minister personally.

Mr. McCague: I doubt if the minister will be able to answer our questions, and I do not mean that unkindly.

Mr. Chairman: There is some limitation, obviously, on when he can come.

Mr. McCague: Yes, but I feel pretty certain that a regulation that comes from Yurkow goes to the cabinet office, and the distribution of that regulation--in other words, the approvals that must be sought--I think are delegated from that point. It seems to me that whoever receives those at the Cabinet Office should be able to come and tell us at least what the process is without announcing any cabinet confidentiality at all. That is the point I am getting at.

1550

Mr. Chairman: All right. That was something, to some extent, I was expecting to have Mr. Kaye be able to address tomorrow afternoon, in the context of discussion that went on this morning when there were questions that came up about the process of putting in draft regulations and what not, but I had not thought of it in terms of what would happen from the Cabinet Office and subsequent. I will undertake to try to locate whoever is the most logical person and who is available, and we will see if we cannot arrange to have him or her come before the committee. I think that is a good suggestion.

Mr. Smith: Does the cabinet secretary sit with the regulation committee? Does the cabinet secretary have people to do that?

Mr. Chairman: The cabinet committee does not ordinarily, as I understand it, have somebody from--

Mr. Smith: No, but the regulations committee of cabinet.

Mr. Chairman: Right.

Mr. Smith: Who is the secretary or clerk to that committee?

Mr. Chairman: In reality, it is the regulations office that does that part of it.

Mr. McCague: No, I think not. I think you will find it is somebody from the Cabinet Office.

Mr. Chairman: I will enquire into that. My understanding was that



they were the ones who orchestrated who would come before it. In that committee, there are civil servants who have dealt with the given regulation and who come before it.

Mr. McCague: I think there is somebody at Cabinet Office who is the recipient of all this stuff, who can come and talk to us and tell us what the present system is. Obviously, we are looking at the Ottawa system. That cannot help but be part of your hidden agenda, Mr. Chairman.

Mr. Chairman: There is no agenda hidden.

Mr. McCague: That being so, how can we decide what we should do if we do not know what we are doing now?

Mr. Chairman: I think it is a good suggestion. I will pursue it.

Mr. Callahan: I think it is excellent because I was just looking at the standing order, as to the question of the cost, that was referred to by two witnesses this morning. How does the process work? Is there an equivalent of the Treasury Board here that would look at the cost or approve the cost before it is passed by the cabinet regulations committee?

Mr. Chairman: That is the cabinet subcommittee, I suppose, in some measure.

Mr. McCague: I think it is the Management Board.

Mr. Chairman: The Management Board has that ordinary function. That is what I questioned at the start of the day.

Mr. Callahan: Do the regulations go before Management Board beforehand to determine that issue, analogous to the federal situation, the Treasury Board, or do they just go directly to the cabinet regulations committee?

Mr. Chairman: That is why I wanted to see if we can get somebody from Management Board to pose exactly that question.

Mr. McCague: Mr. Chairman, I suggest to you that it is not going to do you a lot of good, as Mr. Philip says, to get somebody from Management Board. What I am trying to impress upon you is that---

Mr. Chairman: Well, if anybody knows, I think you do.

Mr. McCague: They are delegated to Management Board by the Cabinet Office. That is why I would like to get a hold of the person who has the delegating authority on receipt of them from the registrar's office. Then he can tell us what it is he does without getting in any confidentiality problem. It is a system that I think we should know about.

Mr. Chairman: I think it is an excellent point.

Interjections.

Mr. McCague: No, I have not at all. It is not going to do any good to get somebody from Management Board here to tell you that all they do is look at the financial implications of them and send them back.

Mr. Chairman: Just for the assistance of the members, there is an article that we gave out in the fall, called Rule-Making in Ontario, by Donald Revell. There is a summary, in part at least, of it by Mr. Dekany--the document is dated June 23, 1986--which gives you a shorter version. The rule-making article is, as you can see, several pages long and it is a bit dry, quite frankly, but it does give the scope of the process. I still think it would be quite useful to have whom you suggest.

Mr. Philip: I am sorry, but somebody is waiting for me outside. It seems to me that the chairman and Mr. Kaye have to get together and look at exactly what it is that can be in our hands by Wednesday afternoon if we are going to have a meaningful dialogue on proposals, suggestions, or what has happened to date. I think that is a very high order on research, to pull that together, but it may be possible.

I think we should trust the chairman and the researcher for the committee to make that decision and not for all of us to decide whether we sit on Wednesday. I think it should be at the call of the chair. The same thing holds true for the following Thursday as to what exactly will be done by when.

It strikes me that we may well be faced with a situation where you may be placing unreasonable demands on research. Unless that research is done and in a form we can use, you are going to have a whole bunch of ideas thrown around the room in a very disorganized fashion, and it may be a waste of time.

Mr. Chairman: If you are suggesting that we ought to have a draft version of the report, there is certainly no way that is going to take place.

Mr. Philip: I am not suggesting that. I think, though, you have to have a summary of some of the key ideas that have come out of the hearings up to a certain point in time which you are going to discuss, some of the questions which the committee might want to look at. We can always add to this, but I think you have to have something in front of the committee members so that we are not just sitting around for an afternoon, brainstorming in a vacuum. Nobody loves brainstorming more, but I would like to see something.

Mr. Chairman: With respect, you already have that in good measure. That is the topic for discussion on regulatory reform. It is not as if the questions have not been formulated. I agree if we could put together what has come from the hearings--

Mr. Philip: I am just suggesting that you may want an update if we are going to make it worth while.

Mr. Chairman: If we can do it, I have no problem with that. That part is a good suggestion.

Mr. McCague: With the one exception on Mr. Philip's comments about next Thursday. Is that this week or next week?

Mr. Philip: Next week, I suggest.

Mr. McCague: I suggest to you, Mr. Chairman, that not all members live in Metropolitan Toronto, and the next day being Good Friday, we might want to be done by noon on Thursday.

Mr. Philip: Good point.



Mr. Chairman: I hear you. If Mr. Sorbara is not available that day, the whole day may disappear. Are there any other constructive comments? That concludes today's proceeding.

Mr. Smith: It is at the call of the chair whether we sit tomorrow afternoon?

Mr. Chairman: That is right. That is the consensus, I think. We are slated to come back at 10 a.m. tomorrow.

Mr. Callahan: Can we not determine that now, Mr. Chairman, whether we are going to sit tomorrow afternoon? We all have things that we could do, probably, other than that, if we are not going to. Why do we not determine that right now?

Mr. Chairman: It is entirely possible that we are going to have a witness tomorrow, and we will not know that until tomorrow.

Mr. Callahan: Oh, is that right?

Mr. Chairman: We are going to try to find somebody from the cabinet office or one of the other spots. That is entirely possible. I cannot say how likely, but it is entirely possible.

Mr. Callahan: When will we know that? First thing in the morning?

Mr. Chairman: We will call now. If you want to hang around, we will tell you.

Mr. Callahan: Why do we not find that out right now?

Mr. Chairman: We are still sitting tomorrow at 10 a.m.

Mr. Callahan: Yes, we are sitting tomorrow morning. I am just saying there are other things I am sure all of us could be doing if we are not going to be sitting in the afternoon.

The committee adjourned at 3:59 p.m.

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STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

REGULATORY PROCESS

WEDNESDAY, MARCH 23, 1988



STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

CHAIRMAN: Fleet, David (High Park-Swansea L)

VICE-CHAIRMAN: Beer, Charles (York North L)

Cleary, John C. (Cornwall L)

Fawcett, Joan M. (Northumberland L)

McCague, George R. (Simcoe West PC)

Pollock, Jim (Hastings-Peterborough PC)

Pouliot, Gilles (Lake Nipigon NDP)

Ruprecht, Tony (Parkdale L)

Smith, David W. (Lambton L)

Sola, John (Mississauga East L)

Swart, Mel (Welland-Thorold NDP)

Substitutions:

Callahan, Robert V. (Brampton South L) for Mr. Beer

Lupusella, Tony (Dovercourt L) for Mr. Ruprecht

Philip, Ed (Etobicoke-Rexdale NDP) for Mr. Swart

Stoner, Norah (Durham West L) for Mrs. Fawcett

Clerk: Manikel, Tannis

Staff:

Kaye, Philip J., Research Officer, Legislative Research Service

Dekany, Andrew C., Legal Counsel

Witnesses:

Godfrey, Hon. John M., Former Joint Chairman, Standing Joint Committee on  
Regulations and Other Statutory Instruments

Eglinton, Graham, Former Counsel, Standing Joint Committee on Regulations and  
Other Statutory Instruments

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Wednesday, March 23, 1988

The committee met at 10:07 a.m. in room 228.

REGULATORY PROCESS  
(continued)

Mr. Chairman: We have before us Senator John Godfrey, who is the former chairman of the standing joint committee on regulations and other statutory instruments in Ottawa and a man long associated with the topic of regulation. Senator, I would like to welcome you here today and invite you to pass on the wisdom of your experience to our ears.

JOHN GODFREY

Hon. Mr. Godfrey: I should start off by correcting you by saying that I was joint chairman. That is important because the tradition of the regulations committee up there has been completely and absolutely nonpartisan. I would like to just talk about that for a minute.

It really got operating about 1974. It went on for a year or two, but really did not function. It did not have a lawyer and so on. It was not until Graham Eglinton arrived on the scene and Eugene Forsey and Gordon Fairweather took over that the thing got active about 1974. That was the time I got active.

The tradition had been to have a joint chairman from the House of Commons and a joint chairman from the Senate. The joint chairman from the House of Commons was always an opposition member and the joint chairman from the Senate was a government supporter. Then, later on, they created a vice-chairman from the House of Commons. The purpose of that was to give the government another person to sign reports, another government supporter. That is important because, really, the fact that a report is signed by a government chairman, a supporter, makes it more effective with the government. It is not just: "Oh, here is the opposition complaining again."

In 1979, when the Conservatives came in, I was asked to stay on as the joint chairman. The real reason, I guess, is that none of the Conservative senators wanted the job. Reluctantly and foolishly I agreed, but it was only for a year. Subsequently, in 1984, I was asked again if I would stay on. I felt very strongly that there had to be a government member from the Senate, as well as the opposition joint chairman from the House of Commons and the government supporters to keep up the reality of how nonpartisan it is.

I can tell you that since 1974 there have been only two votes in the committee. The first one was over a report in the days when they used to send parliamentary secretaries to the committee as members of the committee in order to sort of stand up for the government. They have not done that for some years. I have forgotten who the parliamentary secretary was at that time. We came out with a report that the government did not like and he felt it was his duty to vote against it and nobody else did. They do not have anybody now.



The other was in connection with Alice Arm, which was not so much partisan as that it was highly contentious. We did have an opinion from our counsel, which I felt was wrong. He later retracted it and so on. It was sort of a bit of a mess, which got worked out in the end.

My recommendation to this committee is that in order to keep up the facade it is important to have a government chairman, because your job is to criticize the government, always to pick holes in regulations, and coming from a friendly source, it carries more weight. I think your vice-chairman should be a member from the opposition, again, to sign letters, two signatures, sort of two parties uniting in the recommendation.

Just briefly, the committee in Ottawa has been a lot more effective than most people realize in negotiating with government departments over changes in regulations. I think it has also been very effective in that it is the instrument, the threat, that the legal officers of the departments can use when they are having difficulties with the bureaucrats about drawing regulations. They say: "Well, look, if you put that in, the committee is bound to object. There is going to be a report." It strengthens the hand. If you had Tony Campbell before you, he probably told you the same thing. I do not know. It has improved the drafting of regulations, just the very existence, knowing that somebody is there.

I feel the effectiveness of the committee in Ottawa is 80 per cent, 90 per cent due to the excellence of the counsel we had. First, we had Graham Eglinton, who was a real authority, recognized worldwide on this subject. No member of Parliament is going to sit down and go through regulations and decide whether this offends this or this, that and the other. You just do not have the time or the expertise, information or anything else. You have to have your counsel.

We used to operate this way. The counsel would go through it; then he would bring to the committee criticisms of regulations. We would say, "All right, write to the department." Then we would get the reply and we would consider it again and so on. We got smart a few years ago and we said: "Why should counsel come to us and tell us this? Write on your own. Do not bother the committee with it at this point. Get the reply from the department. You may find it is satisfactory and it convinces you." They work out something and then it comes to committee. If it is not satisfactory, then they bring it to committee. It is done by the counsel initially, dealing with the bureaucrats of the department.

We sort of got our fingers rapped by a very irate minister some years ago, because we brought in a very adverse report on his department and he did not know anything about the subject at all. He had never been consulted by his bureaucrats or anybody. You are really dealing with bureaucrats in this thing. Ministers do not get down and draft regulations any more than MPs look at them. He was annoyed and justifiably so. So we made a rule that we never brought in an adverse report without the chairman and the vice-chairman writing a personal letter to the minister so it got to him and he knew of the problem. Then he really got briefed on the subject and sometimes he was satisfied; he would say OK or he would come before the committee in disputes and the thing would be resolved.

I will give you just one example. I can remember we had an argument with the Deputy Minister of Justice and the Department of Justice as to whether a regulation was legal. They would say, "We have the opinion of our lawyer from

the Department of Justice that it is perfectly legal." That is it. We would say, "Give us the reasons." They would say: "You can't see our lawyer's opinion. That is privileged. We are not going to show it to you." I would say: "We are not interested in seeing your lawyer's opinion. What we want you to do is give the reasons and you are going to have to go to your lawyer's opinion to find out the reasons." The lawyer might have hedged it a bit or something.

We ran into an impasse, so we asked Mr. Basford, then the Minister of Justice, to appear before us with Mr. Thorson, who, incidentally, is now a Court of Appeal judge. The result of all this was that Thorson got overruled. In fact, it went to cabinet. Now they just cannot say to you, "We have an opinion that says it is intra vires and not ultra vires." They have to back it up with the reasons. I think that is an important lesson that we learned.

I think that is about all I have to say on that subject except to reiterate that I do not see how you operate effectively, or how you can ever operate, with a part-time counsel who is in private practice. If you are going to be serious about this, you have to have a minimum of one. You do not need as many as in Ottawa because you do not have the French problem. Graham Eglinton got along for some time, I think, on his own. Then he got a second person. François was more persuasive and now we are up to four, or will be in another month, or they are. I am retired, incidentally.

Would you like me to go through these items or do you want to ask me questions?

Mr. Chairman: I think it might be helpful if you would go through the questions we posed, at least through the ones you think you can make helpful comments on. Following that, I am sure there will be at least some questions coming from members of the committee.

Hon. Mr. Godfrey: The first one is near and dear to my heart: notice and comment.

I must give you some of my background. Although I was not full-time with the mutual fund industry, I acted for American interests that had the second largest mutual fund in Canada and I was president. It was about half my time. It ended up that I was president of the Canadian Mutual Funds Association for a couple of years and I used to deal with regulators, security commissions, and life insurers across the country. I have had a great deal of experience.

The one thing that used to really annoy me was the fact that they would bring out a directive or a regulation without consulting the industry, which was technically incorrect. You would then have to go up and say, "Look, you have done it again." When you pointed it out, they reluctantly agreed with you--quite often very reluctantly because they do not feel like making an admission that they were mistaken. It is very important.

I am referring back to the 1960s. Things have changed immeasurably since then. I remember the Ontario Securities Commission was one of the worst offenders. I remember once I got so mad at Jack Kimber, who was a first-class fellow, but by God, after he had promised he would at least consult us about something, he again brought out a faulty regulation. That would never happen now. The Ontario Securities Commission will always publish, give warnings, ask for comments and so on and involve everybody. I think you will find that in pretty well all departments they do consult the people who are the experts--not that you can trust them when you are dealing with industry. Their job is to be on the other side.



Still, I think there should be a system whereby people are given advance warning. They are not caught by surprise. It is important that the people get comments in before the draft is done. If you just give somebody a draft, there is somebody committed to that. It is more difficult to get them to change their minds than to get out and learn.

I will give you an example of how it works. In Ottawa there is an act called the Transportation of Dangerous Goods Act, which is a very important act, and the regulations are even more important. It took two years, with practically weekly meetings with representatives of the industry and representatives of everybody, to work out the regulations. The department said it would have been just impossible to have done it. They did not have the expertise. They are still there to guard the public interest and so on, but they eventually got something which satisfied everyone.

I think the system they have got now in Ottawa is pretty good, this agenda plan. I do not know how much it is being used. I discovered to my horror in my own law firm that the research branch did not even know it existed. I quickly told them about it because they should be looking at that and advising clients. The industry associations now know what is coming along. That is their job. But the general public should also be advised and not just the industry. As far as notice and comment is concerned, I am for it.

1020

I noticed in the McRuer report that he was not in accord. I think that is about the only thing in the McRuer report I did not agree with. On the whole, we owe a great deal to the McRuer report, and I think in Ottawa they benefited greatly from that. That covers what I think about notice and comment. If you would like, we will go on to disallowance.

Mr. Chairman: Please do.

Hon. Mr. Godfrey: That, again, I think is very important. You are aware of the system in Ottawa now, so I do not need to explain that. Where it is important is not that it will necessarily be used, but that it is the weapon the committee has to come to some satisfactory agreement with a minister or a department. They have a very active committee in Australia, which has the power to disallow. If that committee recommends disallowance, the Senate will unanimously back it up. They have not had to recommend disallowance of a regulation since 1971.

Mr. Chairman: Is the senator suggesting that we should travel there to examine it more fully?

Hon. Mr. Godfrey: Absolutely, to find out how it works. I went there in 1980 and somebody went there a couple of years ago. I have forgotten, so I will not be able to tell you. You have to go on your own.

The power of disallowance works. I can tell you one experience we have had. Has anybody told you about what happened with the one thing we disallowed?

Mr. Chairman: We have had some relating of it but not--

Senator Godfrey: It was a fruit and vegetable thing. Eugene Whelan admitted it was completely illegal, but he said, "I am not going to revoke it until we get something in its place. He said the fact it was there was very important politically, as far as the fruit and vegetable people were concerned, even though it was really quite outrageous.

With this disallowance procedure, the committee smacked its lips, rubbed its palms and recommended finally a disallowance of this. It so happened that the people who were affected by this were having their annual meeting in Ottawa that week. All hell broke loose, I can tell you, in the Liberal caucus, so that the man in charge of agriculture said, "Look, there is no way we can go along with this one." Finally, a compromise was reached and the thing was withdrawn. Otherwise, we would have had the humiliating aspect of the House of Commons refusing to disallow a regulation, which was admitted by everybody to be illegal, just for purely political reasons.

I hope that never happens again. It was not a very good start. But I think just the fact it is there, though, will hasten some action being taken on this other thing to replace it by something else. Of course, I think the people of this committee should be the ones who recommend disallowance. There is no question of that. The same procedure as they have in Ottawa would be the obvious thing.

Mandate of the standing committee: This is on conforming to the Canadian Charter of Rights and Freedoms. I am amazed to find out that it is to be expanded to include that. I just take it for granted it should be there. As soon as the charter passed, we amended ours. We had something about human rights and civil rights and so on. Do you have a list of things to guide you?

Mr. Chairman: There is a list. It just does not include the charter.

Hon. Mr. Godfrey: What does it include?

Mr. Chairman: It does not include the charter. The standing orders have not been amended to reflect that.

Hon. Mr. Godfrey: There is a standing order giving you more detail than the act? I am not aware; I did not know.

Mr. Chairman: That is correct.

Hon. Mr. Godfrey: You have to operate under that standing order?

Mr. Chairman: That is right.

Hon. Mr. Godfrey: There is just no question that it should be in. It is so fundamental. If it is in contravention, if it is illegal, what I think you could probably--surely if it is under some other heading, if it is sort of illegal, because it is illegal and in contravention, it certainly should be there.

The unusual or unexpected use of delegated power: You do not have that. That is very important, recommended incidentally by Mr. McRuer back in 1968, and I think again copied by people in Ottawa from his report. There is no question about that.

I guess we might skip, because it ties in with this "unusual or unexpected" question of a limited review of the merits of regulations. McRuer pointed out originally that if you got into the merits of regulations, that made it difficult to be nonpartisan. We were always very strict in Ottawa about getting into the merits, although you do to a certain extent.



I am reminded of Mr. Justice Fred MacKay, who was a judge of the Court of Appeal of Ontario, once telling me that when he heard an appeal, he decided who was the good guy and who was the bad guy, who deserved to win. Then he said, "I was a good enough lawyer that I could write a judgement to make sure the good guy always won without writing bad law."

I think the definition in your act is absolutely correct about not getting into the merits and the broad policy and the objectives; there is no way you should do that. But in the nitty-gritty, you can be influenced in deciding something that is, say, unusual or unexpected, by the merits. If you are ever getting into something which is on the merits, it should only be on the basis of a unanimous opinion of the committee.

The one thing that stopped all discussion of criticizing something on the merits was somebody saying in a committee, "That is on the merits and therefore I don't think we should go into it," because you did not want to get into any partisan discussion. But when you have the unanimous decision of everybody, without admitting that you are looking at the merits, but by using that "unusual or unexpected" use, you can correct.

An example would be a regulation which increases the price of something which you are allowed under enabling clauses, usually to charge for services. If you are charging \$1 for something and you increase it to \$200, under the "unexpected or unusual," you are getting into merits there, as to whether it should be \$100 or \$200, maybe it is only \$100 or \$75. Sure as hell, because it would be so outrageous on the merits, you would sneak it in under "unusual or unexpected" and draw attention to it and so on. I think that certainly should be there. That is one that is used as sort of a catch-all.

Should the committee's examination of the regulatory process be explicitly authorized in its terms of reference? Yes, if you do not have the power, but when I read the act you seem to have the power to go ahead on everything referred to you. Under the guise of that, you probably can have pretty wide powers.

I will give you an example. In Ottawa, the Senate committee of national finance is supposed to look at the estimates, which is the dullest thing you could possibly do, a completely useless procedure. Nobody ever amended the estimates in the history of Parliament, except for one item of \$7,000 or something. But under the guise of looking at the estimates, they take a look at one department a year and really go into it. They never got a reference from the Senate, although usually if you go into that sort of thing you get a specific reference from the Senate to the committee. Under that guise, they went ahead and operated for years very happily, very effectively and so on. Under general powers, if you want to go ahead, do not hesitate to go ahead and probably nobody will object if you do not have the specific power, although the person has to be very technical on regulations; he has to think up some technical argument.

The next one is regulation of enabling clauses. Here is something that is near and dear to my heart again. I brought along an extract from Senate Hansard of December 11, 1984. I think everybody has a copy of it. If you notice, I brought in a motion on the question of being able to look at enabling clauses. What happened was that in 1971, when John Turner was Minister of Justice, he had a directive to caucus, to the cabinet, on enabling clauses which, in effect, is what is reproduced here.

That was approved by cabinet. I do not believe it was approved by cabinet at that point. Later on a document came out, which you should get a hold of, which includes this on drafting legislation and so on. It is quite interesting. It had this direction about enabling clauses.

We discovered by pure chance the existence of this in committee about six years ago. We did not know anything about it; we did not know anything about the original directive. We just wrote to the Minister of Justice to get a copy and he sent it to us. When I looked at it I thought, gosh, we really should take an interest in enabling clauses.

I moved this resolution. If you go through the regulations, paragraph 2 of part IX of the cabinet directive. The cabinet directive, under regulations says, "When bestowing the power to make regulations upon a person or a rule-making authority, care must be taken to ensure that the statute is not couched in unnecessarily wide terms."

That is the broad general principle you should always follow. Then, "Specifically, certain powers are not to be granted unless the memorandum to the cabinet requesting the authority for preparation of the legislation by which such a power would be conferred specifically requests authority for the power and contains reasons justifying the power that is sought. These powers include the following..."

If you go through those powers and study the McRuer report, you will find that every power that it is recommended they should not have, unless they can give good reason for it, is covered in the McRuer report. I guess John Turner, as federal Minister of Justice, took advantage of Mr. Justice McRuer's report in 1968 and plagiarized it, I suggest, without giving him enough credit for it. And there are obvious things.

What I said is that if there can be occasions when it is perfectly justified to have those powers in, there should be reasons given. What John Turner and his cabinet directive said was, "Look, if the department wants these powers, you have to give the reasons for them so we can then judge whether they are justified."

My position was that the enabling clauses are usually overlooked by committees to consider. They do not have the expertise; they are not interested; they do not realize the importance. I can give you numerous illustrations of that. But if it is drawn to their attention, if it contravenes one of these things--there may be a very good reason--then they should at least direct their minds to it and they should demand from the department the same reasons the department gave the cabinet for allowing them to do it.

What I was supposing was not to give the regulations committee the power to say that the enabling clause was faulty because of this, that or the other thing; what I wanted and explained ad nauseam was to alert. We had the staff. We had Graham Eglinton and now François Bernier, who are experts on these things, and they could take a look at these regulations, advise the committee, and then we could advise the committee that was dealing with the bill.

I will give you some illustrations. I can remember when I was on a Senate committee on banking, trade and commerce looking at some tax treaty bills. The bill that was actually before the committee had the power to make a regulation which, in effect, could increase taxes, which is contrary to



everything. There is no way that you should be able to increase taxes by regulation. My God, this had been in something like five or six previous bills, confirming these tax increases, but nobody noticed it, because nobody was thinking about it. Because of my background, I saw it and brought it up and the government immediately amended the bill.

I had arguments with Marc Lalonde on another bill, the same thing on enabling clauses. I wrote him a letter, nonofficial because our committee did not have the power, although we got our counsel to look at some of the bills, unofficially, so I could show how it would operate in practice. I sent a long letter to Marc Lalonde, who was the minister of a bill that was appearing before a House of Commons committee.

A few weeks later I got a long letter back from him explaining why he did not agree with me, overlooking the fact that four days before I had also got a letter from him agreeing with what I said and advising me that he had proposed amendments to satisfy. Of course, I just loved that. I could write him a letter and say, "I really prefer the bureaucrat who drafted the first letter to that damned bureaucrat who didn't know what the hell he was talking about, who drafted the second letter for your signature."

It is the bureaucrats who are the people. The ministers do not have the time. It is the bureaucrats who have to be checked on.

Also for the record, I would like to--

Mr. Chairman: Before you leave that, I am wondering whether you think the guideline--I guess that is the best way to describe it--which is inherent in the motion you had proposed, is more effective in the hands of the government to effect the drafting even before they get to the first draft regulation, or whether it is the sort of thing that would also be effective if it is a guideline this committee or other committees of the Legislature would use to evaluate legislation.

Hon. Mr. Godfrey: There is nothing original in these guidelines. It goes back, as I have said, to McRuer, certainly. I think I am right in saying he recommended every one of them, but long before McRuer, like common law almost, these are the things to be avoided in regulation.

It is so tempting for government departments and bureaucrats. The favourite one is the one that just gives them the general power to make regulations which "in his opinion," or something like that, carry out the intent of the act. "In his opinion" makes sure you cannot go to the court to say it is illegal. Everybody knows you should not have that kind of thing. They always like to try and sneak it in; then everybody objects and so on. Those are the kinds of things that are dear to the hearts of the bureaucrats and the ministers, which have to be watched. You cannot trust them; it just gets down to that. That is why you have to have a body like this.

I think the way it is set out there is excellent. It condenses, in effect, what McRuer said and I think it is something everybody agrees to. I think you can very well bring it into your report that these are the guidelines that should be used. You can get your researchers to look up McRuer and confirm this. I maybe overlooked, but I think I am right that these were all included in his report: power to subdelegate regulation, impose a charge on the public other than fees for services.

Here is one: power to make regulations involving important matters of policy or principle. I will give you an illustration of that. You may recall the famous gating bill where the Senate held it up in Ottawa. Perrin Beatty was the Solicitor General. The main thing that got all the publicity was whether the parole board should have the power to say that the man is gated for an extra 50 per cent of his term or whether the judiciary should be involved. I happen to feel very strongly and I had felt when the Liberals were in power that the judiciary should be involved and managed to persuade Kaplan to amend the bill, because I said we would dig our heels in.

Then Perrin Beatty came along. He went back at the advice of his bureaucrats to the original. There was all this publicity. I was on the committee and he asked me to come and have a meeting with him, with one other Liberal on the committee. I went to him and we discussed the question. I said: "Perrin, apart from that gating thing, whether it should be judicial, you have provided in this bill that the definition of who shall be gated shall be done by regulation. That is very essence of the bill. The definition was in the act brought in two years ago. Your bureaucrats have eliminated it, because they just love to be able to get it in, and they are going to do it by regulation. You know that's wrong."

He said: "Of course it's wrong. I didn't notice that. Nobody brought it to my attention. I'm damn mad about it."

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That was when he came back with a bill. They had all the clauses in. Nothing got into the paper about that one, but it was just very, very important. He recognized it just like that and he was just as put out. But if nobody had brought it to his attention, his bureaucrats would have sneaked it through on him. Here he was, a former member, vice-chairman of our committee. He was very well aware, and yet they nearly got away with it.

I do not think there is anything else. Oh, yes, you said "policy directives." I am not quite sure what you meant by that. Actually, I know what you mean: policy directives which are very much like a regulation, because it is very difficult to distinguish between a regulation and a policy directive. A policy directive can be just as effective, for all practical purposes, as the regulations, and a lot of them might come in under the definition of statutory instruments under our act as opposed to regulations. You have not got that definition. I certainly think you should make a comment on that.

I added a third one, that is, the Charter of Rights and Freedoms in bills. Again, going back five and a half years to six years, you will see in the material that I have given you, if you look at the third page--

Mr. Chairman: We will make this an exhibit, by the way, so the members are aware.

Hon. Mr. Godfrey: --I proposed a motion, "That the standing joint committee on regulations and other statutory instruments be authorized to examine the subject matter of clauses of bills introduced in the Senate or the House of Commons, where such clauses may"--you see where I use the word "may," not "do"--"by express words or otherwise, infringe upon the rights and freedoms guaranteed by the Canadian Charter of Rights and Freedoms."



The purpose with that was to alert other committees, not to decide whether the bills did or did not infringe. When you say "subject matter," that was so you could discuss it before it actually got to the committee. Even if it had only first reading, you could look at a bill. We felt that our counsel to the committee, because he was an expert on the Charter of Rights and Freedoms in connection with regulations, would also be an expert as far as bills are concerned.

When I proposed that six or seven years ago--it was right after the charter came in--I was told by the government leader in the Senate that Mr. Chrétien, the Minister of Justice, was very much opposed to it. The Department of Justice said: "This is our job. We have the experts. They will decide whether it is infringing the Charter of Rights and Freedoms."

Of course, they had the experts, the lawyers. But the legislative body should not wipe its hands of it and just rely on the bureaucrats, particularly when you cannot trust the departments. When they want extra power and so on, for their own reason, they will come as close as they can. If I were the minister, I would probably do exactly the same thing.

So I said to Ray Perrault, the government leader, "Let's go to see Mr. Chrétien about it because that, to me, is just so obvious." We went to see him, and he had never heard of it. It was one of his bureaucrats who sent the word along, using Mr. Chrétien's name. Finally, I said, "I would like to have a meeting with this guy."

He came to my office with somebody else. God, after an hour I just got so damned mad at him. They were completely--they managed to block that. When Mark MacGuigan became Minister of Justice, they still fought it. We got it through the Senate. It went to the House of Commons and it sort of got side-tracked there.

I feel very strongly about a committee like this, which if you look into the Charter of Rights and Freedoms as far as regulations are concerned, would have the expertise, or your counsel would have the expertise, to look at bills and alert other committees, saying: "Don't overlook this. It is up to you to decide. We are not going to decide, but we just want to draw your attention that there is a question here."

On number 14, yes, I think you should have the same thing that there is in Ottawa. You have to reply to reports in--I have forgotten now--40 days or something. But at least you know they are giving some consideration to it.

On the other amendments to the Regulations Act, there are a few I would like to make some comment on. Section 3 of the act states the general rule is the commencement of regulations which is filed. Ordinarily, we always took the position on our committee in Ottawa that it should not start being effective until it has been published. However, I notice in your act that it does not affect anybody who has not had it drawn to his attention. So I am not particularly exercised. Between the filing and the publishing, if somebody is in breach of the regulations and he does not know about it, then it does not affect him. That is not a bad compromise. I would not get too excited about it, although in theory, I think it should be when it is published.

The duties and powers of the registrar--they certainly should be defined in the act.

On the next one I am saying yes, he should have that power. It says:

"Currently the registrar has that power under section 8 of regulation 899." I put an X opposite that simply because that is subdelegating by regulation, and unless it is specifically provided for in the act, that is one of the prohibitions. It certainly should be, but it should be in the act.

Number 17: Down with that section! Section 6 coolly says the minister "shall determine whether a regulation, rule, order, or bylaw is a regulation within the meaning of this act," and this decision is final. He eliminates the courts. He is above the Supreme Court of Canada. I could not believe it when I read that. I think you should really lambaste that section of the act. Why the hell should the minister decide whether it is a regulation? If it is a regulation, you should be able to go to court if you are a citizen.

Mr. Chairman: Just for the assistance of the members of the committee, section 6 of the Regulations Act says, and I am going to read the whole thing:

"The minister may:

"(a) determine whether a regulation, rule, order or bylaw is a regulation within the meaning of this act and his decision is final;

"(b) determine who shall be deemed responsible officers within the meaning of section 2; and

"(c) determine any matter that may arise in connection with the administration of this act."

Section 2 deals with filing, and it deals with the process of it, but obviously section 6(a) is the key one.

Hon. Mr. Godfrey: I think section 6(c).

Mr. Chairman: It overrides the whole act.

Hon. Mr. Godfrey: I can never, ever recall seeing the equivalent of that. There probably are some. It is in here. No doubt they have sneaked it through in other acts here, but certainly they should not have overruled the court. Somebody said, "Look, you have not got the power to do do this" and so on and so forth under the regulation. It just should not be there.

Mr. Chairman: Is the Supreme Court getting even these days?

Hon. Mr. Godfrey: I beg your pardon?

Mr. Chairman: Do you think the Supreme Court is getting even these days?

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Hon. Mr. Godfrey: It probably would not get to the Supreme Court. And, of course, the cost of litigation is such that for some poor guy to try to litigate something as to whether it is intra vires or ultra vires, from a practical point of view, it just does not happen unless it is some large corporation. Again, that is the importance of this committee, to stand up for the public and say, "If it is ultra vires, then you change it." You should not have to put some private litigant to the cost and expense to get it amended.



"24. Should an explanatory note accompany each regulation?" I think that is a good idea.

"25. Should the statutory authority for a regulation be identified more precisely?" I do know how precisely it is identified now, but it certainly should be identified so that you know exactly what they are operating under.

Mr. Chairman: Right now they do not identify it at all.

Hon. Mr. Godfrey: That sort of keeps them honest. At least if they have to identify what their authority is, they cannot get away with as much because you people can look at it and say: "Look, that's just ridiculous. If that is your authority, well...." Certainly that could be included.

I think that is about all I have to say.

Mr. Chairman: Thank you very much. It has certainly been a broad canvassing of a lot of issues in the whole area of regulatory scrutiny. I have an indication that Mr. Callahan would like to pose some questions.

Mr. Callahan: I am sorry I missed part of your presentation, Senator. I am going to blame that on the the Minister of Transportation (Mr. Fulton). Trying to get into Toronto is like trying to get into Rome when you were not a citizen.

I find your comments very interesting. I am going to ask a question, but give just a little history first. When we formed the government in 1985, I was offered the chairmanship of this committee and went around asking people, "What is the committee?" Nobody knew. The only fellow who knew was Bob Nixon, and he gave me an outline of what it was. I guess over the couple of years of chairing it and also just sitting here in the last couple of days, it has become quite apparent that this committee, from a regulations side, has a tremendous responsibility; and quite apart from that, the private bills side, because we used to pass more legislation in one Wednesday than I think the House passed in perhaps a session.

I have a couple of questions. One was raised by Quebec when they responded to our query about this, whether we should require or allow the committee to watchdog over the question of the Charter of Rights and Freedoms. I say, as a preamble, I felt that was important, but having read their statement, I reflected on it again. Because there are so few really charted waters in terms of the Charter of Rights, I got the impression they were saying that unless it was in the clearest case, as a result of a case in which it was decided it was not proper or whatever, you might be prejudging what the court should really decide and thereby perhaps eliminating the possibility of implementing a policy, without giving the opportunity for it, and actually the powers of the executive, to try to implement a policy.

I understand your comments about the concerns you have, that those people who want to push something through may try to do it by way of regulation, but I would like you to comment on whether you are saying the Charter of Rights and Freedoms should be addressed in all cases or if it should just be done in the clearest of cases, where a regulation is being put through that clearly violates the charter.

Hon. Mr. Godfrey: I do not think you should refer to a legislative committee just cases which you think are clear violations, because that is your opinion. Other people might not agree. I think they should consider all.

They may very well adopt what you say: "Look, this isn't clear. We'll let the courts decide. We won't do it." There is nothing wrong with that. But after all, the Charter of Rights was passed by a legislative body and there is no reason why another legislative body cannot decide how it is going to interpret it for the purposes of its own legislation, that in this case it is not going to rely on the courts. I think you have to judge every case individually.

There may very well be cases, as you say, that are undecided, where the merits of the case so outweigh any technical--and of course you have got that thing about a just and democratic society--

Mr. Callahan: That is right, in section 1.

Hon. Mr. Godfrey: That comes out. So you may very well decide, "Look, the merits of the case are in favour of what we have said. The fact that there is some doubt, well, we are going to ignore that because the merits are so strong, and we would think that the court would also ignore it if it is justifiable under that section of the charter."

I think it is a question of everybody using his or her judgement on an individual basis. The main thing is that they should at least apply their minds to it and decide whether they are going to use their judgement. They should not overlook it and not rely on the bureaucrats. After all, you are legislators, and regulations are legislation; they should not be decided by the bureaucrats, they should be decided by elected members.

This committee is the only one that really has the expertise, I would suggest, and that is because of the counsel you have. Again, I impress upon you, I do not see how if you operate without a full-time counsel, you can possibly do the work. I remember Duke MacTavish, who was a very able guy, and I had a lot to do with him in the past. He was very able, judging by the reports. He was retired; he was a damned good legislative draftsman in his day, but I cannot imagine that Duke went through all the regulations with a fine-tooth comb.

Mr. Callahan: Can I read from that you are suggesting that if there is a doubt, it should be resolved in favour of the regulation going through? The concern I have is that if this committee were to take too strict a standard, it could become a frustration of a policy that perhaps the executive was trying to enact. You might become like the rabbit that cannot move because it cannot decide which way to go.

Hon. Mr. Godfrey: I do not say this committee should have any power to decide. It is not this committee that is going to make that decision. All this committee does is draw the attention of the other committee, and that other committee, which is considering the whole bill and considering the merits of the bill or the merits of a regulation--I am sorry; I am mixed up between bills and regulations. On a regulation, of course, this committee would be the one.

Mr. Callahan: That is assuming we have the power of disallowance, but we were told yesterday by counsel from Ottawa that the power of disallowance really is a denuded power, because you put it into a report, "Resolved that these regulations shall not pass," and it goes to the House, which may vote on it and may very well vote in favour of it, but it does not have the effect of changing the law. In other words, all it is is a report. We got that from two counsel, I think, both of whom agreed that even if we had



the power of disallowance and even if our report were adopted by the majority of the Legislature, apart from the political implications of the minister's proceeding on with it because of that, it really would not change the law; the regulation would stay in place.

Hon. Mr. Godfrey: In that case then, you should benefit by their experience, and they are legal, and so draft the power of disallowance that it does that. It is ridiculous to have a legislator vote that it should be disallowed and then it is still in effect. I was not aware of that. If I was aware, I have forgotten that somebody gave that opinion, because I have been out of the Senate since last June.

Mr. Callahan: A lot of us thought that was a rather broad interpretation because we had gone along on the assumption that things such as the Ombudsman's report and other reports that committees have that are put before the House and voted on do in fact change the situation, but it seems as though they are nothing more than moral suasion or a political suasion.

Mr. Philip: That is not clear yet, Mr. Callahan. That is still under debate.

Hon. Mr. Godfrey: Yes, ordinary reports are only persuasive. Although it is funny, ministers do not like adverse reports. Even though, without the power of disallowance, they have no effect, they do not like them; they pay some attention.

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Mr. Callahan: The other thing is, you were not terribly concerned about the fact that our regulations come in force when they are filed because a person cannot be prosecuted under it until they have notice of it. That came up yesterday, and the act itself talks about "or had actual notice of the regulation." There is no definition in the act as to what actual notice is, as there would be in the Registry Act, where the registration is actual notice. You could have an instance there where someone might know about it as a result.

If we go to prepublication, which is another suggestion that was being made--it is done in Ottawa--could it not be said that if you leave the act that way, with the filing being the effective breathing of life into this regulation, the prepublication would have given actual notice to those people that a regulation was coming forward and therefore they would be affected and subservient to that regulation upon the filing? Would your views change that this perhaps should also be amended?

Hon. Mr. Godfrey: If you have prepublication and you do not have actual publication, how do you know when it is filed? How do you know when it comes into effect? That is not really going to help matters, because until it is has been actually filed, it is not in effect. You do not know that it is being filed. I prefer that it not come into effect until published, but I say this is--

Mr. Callahan: You do not see a danger in it.

Hon. Mr. Godfrey: I am terribly excited because of that provision, but certainly I prefer it.

Mr. Callahan: Thank you very much.

Mr. Philip: Can you comment on the role of this committee or the role you think a regulations committee should have in the matter of oversight? We have wall-to-wall regulations in every government, and I frequently wonder how many are actually being enforced or whether the regulators, when they come up with their regulations actually have built into their budgets the proper enforcement mechanisms.

You have talked a lot about the front end of the procedure. I wonder if you can address whether there is a role, and what is that role, in following up on regulations that have been in force for a period of time to find out whether they are being enforced or whether they are simply on the books. Our Provincial Auditor got into that recently with some environmental issues, and it seems to me that it is certainly an issue in public accounts areas. I wonder whether you feel that, from a regulatory point of view, it should be an area that a committee like this should be looking at.

Hon. Mr. Godfrey: From a practical point of view, I think it would be very difficult for this committee. In Ottawa, they have a minister and a department to do it, with Tony Campbell and, I suppose, all of these people doing that. Just from a straight, practical point of view, I think you have to rely on people like the Auditor General and, if you want, have somebody like a local Barbara McDougall in this whole question.

You would have to put on a big staff on that one, really. Certainly it is getting into policies and merits a great deal on that. Of course, that should be done, but I cannot quite see from a practical point of view how this committee could do it.

Mr. Philip: I find in talking to our colleagues in the United States that the committees are spending more and more of their time; part of that is because of the division between administration and legislative.

Hon. Mr. Godfrey: Yes, certainly.

Mr. Philip: At the present time, there is a problem with administration simply not acting on a awful lot of the legislative. That may explain part of the emphasis of those committees. But it seems to me absolutely ludicrous that we go through all the procedures of passing legislation or regulations and then most of them, or a good portion of them, are not being enforced anyway.

Hon. Mr. Godfrey: Yes, I agree. But as I say, I just have a little difficulty seeing how, from a practical point of view, this particular committee could do it. I think this committee would have enough to do. You must have an enormous number of regulations, not as many as Ottawa, but a lot every year.

Mr. Chairman: Eight hundred or 900 a year. It varies a little bit, but it runs a little under 1,000 a year.

Hon. Mr. Godfrey: Yes. That is getting up to Ottawa. It is 1,200 or 1,300 or less than that now.

Mr. Philip: One way of doing that is on a rotation basis by ministries. You could, with proper staff preparation, go through the regulations of a particular ministry in one year and not hit it again for the next 10 or 12 years. Basically, that is what the Auditor General and the Provincial Auditor do. Except for those where they have a mandate to go in and



audit every year, they will rotate particular ministries, do an overall sweep on a particular area one year and then not touch it for a few years.

Hon. Mr. Godfrey: One thing I have not mentioned is relevant to the enabling clauses and other things. Have you heard about the Australian standing committee for the scrutiny of bills? Has anybody told you about that?

Mr. Chairman: There has not been specific information about the operation.

Interjection.

Mr. Chairman: I will do my best, if I go, to take the whole of the committee, if that is any comfort to the other members.

Mr. McCague: You have to get our permission to go.

Hon. Mr. Godfrey: In Australia, they have a regulations committee in their Senate. It is not a joint committee; they do not have it in the House of Representatives. It has this tremendous power of disallowance.

Senator Missen, who was really the father of regulations from the legislative side and so on, was very highly respected. They started something called a scrutiny of bills committee. They copied from our procedure in Canada because they started off thinking they might have a joint committee of their Senate and House of Representatives to scrutinize bills from a technical point of view, like human rights and enabling clauses, all the technical things, various things.

They did not get much enthusiasm from the Australian House of Representatives. Then they adopted the procedure, invented in the Canadian Senate, of looking at the subject matter of a bill before it comes to them. Adopting that procedure, they have this scrutiny of bills that looks at a bill before it is passed by the House of Representatives, before it comes to the Senate. They look at it very quickly, within a week or two, and bring out comments for the benefit of committees studying the bill. Half of their comments are connected with human rights, civil rights and transgressions, which would come under our Charter of Rights and Freedoms.

That is another argument why I think this committee, in those two areas of the Charter of Rights and Freedoms and enabling clauses, could fulfil the same function as the Australian scrutiny of bills committee. The setting up of that committee was bitterly opposed by the government. The government had a majority in the Australian Senate, but the Senate voted it through, showed its independence. It is a completely nonpartisan committee. If they bring in an adverse report, the government pays attention, fixes up the bill in some way and satisfies everybody.

Mr. Philip: How do they remain nonpartisan if they are dealing with anything other than the technicalities of the bill?

Hon. Mr. Godfrey: As I said, they do not get the fundamental--surely if something is a breach of human rights and civil rights and so on, it is not--well, it is to a certain extent merit, because it is merit, whether it does or does not, but still it is pretty technical stuff. It is just like regulations. They get it again. But there is a grey area, which you cannot really define, as to whether you are dealing with the merits or not.

I think they would operate in the same way we do in Ottawa, where if it is actually a question of merit, and one committee member says, "Jack, you should not be doing this," then we do not touch it. It is only when it is unanimous, so it can be completely nonpartisan, that we occasionally get into the merit things, but we never admit that we are discussing the merits of something; we bring it in under some other clause.

Mr. Pollock: Senator, you mentioned in your opening remarks that your committee on regulations helped to change some regulations. Is there any one particular regulation which stands out in your mind that you were pleased you changed?

Hon. Mr. Godfrey: God, there are so many. Would Mr. Bernier have told you yesterday our rate of success?

Mr. Pollock: He might have. I could not tell you.

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Hon. Mr. Godfrey: I have forgotten, but it is quite high, percentage-wise, being able to negotiate. I use the word "negotiate" advisedly, because that is what, in effect, happened. It is not confrontation until the last minute, when we decided that we would run a report. Now, of course, you would ask for disallowance and you involve the minister personally. I guess it could be that you get to the confrontational point, but that does not happen.

I cannot remember any particular one. A lot of it is very technical stuff.

Mr. Pollock: Yes, I agree.

Hon. Mr. Godfrey: It is not going to get into the papers, but every now and again it does. Our committee did not get into the papers very often in Ottawa--it is not one the members thought was particularly politically rewarding--but I can tell you this much: the press knows about it. They give credit among themselves to those people who are conscientious and work on the committee. It is one of the things they discuss among themselves.

I have always been very lucky in having had a favourable press. I always attributed a lot of it to the fact that I was the joint chairman of this committee and turned up at all the meetings and took a completely nonpartisan position and so on, and did some valuable work. It just got out around the press. You do not get publicity, but it gets out and it is filtered back. You do get recognition, sometimes from quarters where it counts.

Mr. Pollock: I just wanted to check that out. Thank you.

Mr. Callahan: Was it not until 1984 that Ottawa--I am gathering that from the Senate debates--decided to have this committee?

Hon. Mr. Godfrey: In which year?

Mr. Callahan: Was it not until November 1984, when you moved the motion that they have a standing committee on--

Hon. Mr. Godfrey: Regulations?



Mr. Callahan: Yes.

Hon. Mr. Godfrey: Oh, no, it was in 1972 or 1973. I have been on the committee since 1974.

Mr. Callahan: So this was just enlarging the parameters.

Hon. Mr. Godfrey: Yes. My motion was just to give them the power to get into the legislative side in these two areas, something that the scrutiny of bills committee had in Australia. I gave a speech for an hour and a half--I am not going to burden you with that--about the reasons, for anybody who wants it.

I went into the whole Australian experience and I just picked these two things out. At one point, on the Charter of Rights and Freedoms, I was told that if, instead of the regulations committee doing it, the legal and constitutional affairs committee were given the power, it had more chance to get through.

I went to the chairman of the legal and constitutional affairs committee, Senator Joan Neiman, and she said, "Great; yes, we'll do it." I said: "Then I'll withdraw my motion. I won't move on it, and you put in a motion." By God, she put in a motion and eight months later she still had not spoken on it. It did not do a damned thing. I think the legal and constitutional affairs committee could have done it, another alternative; but there was not any enthusiasm, so when the session ended I started the ball rolling again to have the regulations committee do it.

Mainly, I think it has an advantage, because if you are going to look into the Charter of Rights and Freedoms for regulations, then your counsel has the expertise to look at bills. Again, as you point out, it is going to be a matter of judgement in the end as to what you are going to say and how important and whether it is reasonable.

Mr. Callahan: I think perhaps it was not as important early on when, really, most statutes contained a final wrapup clause that certain things could be done by the Lieutenant Governor in Council.

Hon. Mr. Godfrey: Yes.

Mr. Callahan: More often than not they were just forms or things that really did not affect people's rights, but today it seems as though that is a catch-all clause for an addition of power which they have not already got in the first part of the bill; greater reason for that type of scrutiny.

Hon. Mr. Godfrey: I may be wrong in this, but I cannot remember in the last few years seeing some regulation, an enabling clause, where it says, "in the opinion of the minister," which gives him power to carry out, which is a stop of an appeal to the courts. There may be the odd case. If they have the nerve to bring in something like that, it has been so severely criticized by the regulations committee and everything else.

If you just say "which is to carry out the intent of the bill," not "in the opinion of the minister," then, if you decide it is not carrying out what was intended of it, you go to the court. But if it is "in the opinion," you have a much more difficult task. The ministry cannot get away with everything. They have a body of law that they will look into it to a certain extent, even when it is "in the opinion."

Mr. Callahan: We were also told that your committee did not deal with private bills. This committee is a dual committee. It deals with private bills, up to this point anyway, and more time was spent on that than on the regulations. Do you have another committee that deals with private bills where people are seeking private legislation? For instance, the one here that I guess got the greatest foofaraw was the Toronto bill that allowed them to set up no-smoking places in the workplace. That was passed one Wednesday here with not a great deal of fanfare, but the impact of it now is rather significant. Do you have that type of thing?

Hon. Mr. Godfrey: I can only speak for the Senate, and it depends on the area, but, generally speaking, the standing committee on legal and constitutional affairs will consider private bills.

Mr. Callahan: We understand you sat twice a week, I think it was, was it not?

Hon. Mr. Godfrey: We do not have very many private bills.

Mr. Callahan: I am sorry, no, the regulations side of it. You sat twice a week?

Mr. Godfrey: No. We were given the authority--although it had really nothing to do with it--to look into the question of freedom of information. Jed Baldwin, who is father of freedom of information, is a Conservative MP for the Peace River district. He brought in a private member's bill for freedom of information, and it was referred to the joint committee on regulations. I do not know why, particularly, but it was. We used to meet once a week--and it was very interesting, I might say--and that committee went down to Washington and had a great deal to do with getting the Access to Information Act through, mainly because Walter Baker was a member of our committee. When the Conservatives got in in 1979--everybody immediately loses his enthusiasm for freedom of information if they are in power--Walter got so steamed up as a member of our committee, and he was the House leader, that he brought in a bill right away.

I remember once in caucus saying to Mr. Trudeau, "Prime Minister, even if in your heart and soul you don't believe in freedom of information, couldn't you make a better effort to pretend that you do in public?" He did not like it too much, but eventually brought one in.

We used to meet once a week on that and we met once a week strictly on regulations, so that would be twice. When we suddenly woke up to the facts, we asked: "Why did we bother authorizing the counsel to write on his own? He can carry it on." That eased quite a bit and so it is every two weeks that we meet now.

Mr. Callahan: But how long would you sit for?

Hon. Mr. Godfrey: How long would it take?

Mr. Callahan: How long would the committee sit for?

Hon. Mr. Godfrey: The whole secret is that somebody has to read the material beforehand, which I would say takes up to two hours, and you get to the point where you are knowledgeable and you do not bother reading. You get to trust your counsel, and if it says "reply satisfactory" or "action taken," you do not read the whole thing. You read the controversial ones and so on.



Having done that beforehand, that saves an enormous amount of time. If you did not do that, you could be three hours. It is much quicker to read it beforehand and then you just go through it, OK, OK, OK, and you can come down and get out in half an hour, or certainly very rarely more than an hour. When you stop, when there is a controversial matter and you discuss it, then those members of the committee who have not taken the trouble can get briefed on it very, very quickly and join intelligently in the conversation, or we will postpone it to another meeting so that people can give it some thought. So it is very routine until you finally get up to the questions, "Are you going to go and write to the minister or not?" and "Are you going to get the minister up before the committee?"

It is the chairmen who have to do the work of being sure they read everything. Otherwise, you are completely in the hands of your counsel. Although you rely on him for 90 per cent of the effectiveness, including the drafting of reports and everything else, you have to use your own independent judgement on certain matters.

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Mr. Chairman: There being no further questions, I want to extend my gratitude and thanks on behalf of all the members of the committee for an excellent presentation, as well as the response to numerous questions. It has been a big help to us and we appreciate your contribution.

Hon. Mr. Godfrey: I see you have a real expert back here, Graham Eglington.

Mr. Chairman: In fact, we are all ready for him to come up, but I also advise that we will be pleased to send you postcards from Australia.

Hon. Mr. Godfrey: Graham is the man to arrange the trip there for you.

Mr. Chairman: Mr. Eglington, I understand you are the former counsel for the standing joint committee on regulations and other statutory instruments in Ottawa.

Mr. Eglington: That is right.

Mr. Chairman: We will give you enough time to pull everything out of your briefcase.

Mr. Eglington: You need not be intimidated by it. It is just that I was astounded by how much I had forgotten about the subject, so I brought some reinforcements with me.

Mr. Chairman: That is fine. Perhaps you would like to make a presentation to cover whatever issues you think are relevant. I think you are aware of the list of questions that we had prepared to cover the topics we are wondering about. Following that, I am sure members will have questions for you.

GRAHAM EGLINGTON

Mr. Eglington: I do not have a written presentation, mostly because I do not type and in my present position there is no access to typographical services for extracurricular activities such as this.

The former chairman described me as an expert on the subject. I think I really fall into the category of being a has-been, because it has been five years, at least, since I had anything to do with statutory instruments or the statutory instruments committee in Ottawa. What I really can offer you, I suppose, are reflections over the past, and perhaps they are reflections more with hindsight than anything else.

I am also aware that one of the subjects I am supposed to talk about is disallowance. In my present position, I am not supposed to criticize government policy. I have never been known to be very discreet in the past, so I am trying my best to keep that in mind when I speak about it.

I would like to begin by taking up one thing that I heard John Godfrey talking about; that is, when they woke up to the fact that they could let the counsel write the letters back and forth and then bring it to them only at the end when there was an impasse, that sort of approach to counsel's job is perhaps one of the fundamental reasons underlying my departure from the committee.

I never believed it was the counsel's position either to manage the committee or to take its decisions. I really think that is most important. Committees overseas, for instance in the United Kingdom or in Australia, where scrutiny of delegated legislation has been going on for half a century and where the committees are very powerful, none the less keep their legal advisers at arm's length and in the proper legal adviser's role.

In Canberra, the legal adviser does not even attend committee meetings. He submits his opinions in writing and then if the committee wishes to take action or take the matter up with departments, the committee makes that decision.

Occasionally, in my time with the dominion committee, I used to write a letter beforehand merely seeking information where we were obviously in a situation where we could not make head nor tail of what the regulation was about without some sort of background information. Always in these situations committees have to be careful that they do not become captives of their professional advisers, especially legal advisers, because lawyers have a tendency, as I am sure you all know, to take over everything they can. It is something that has to be kept firmly under control.

Of the questions that were posed on the sheets, there are some of them, obviously, that I am not going to address, such as amendments to the Ontario Regulations Act. I would not presume to do that. Whatever I may have known about that act once, I have certainly forgotten. I also do not want to get into mysterious subjects like the definition of a statutory instrument within the legislation. That is a bit like the Schleswig-Holstein question. You remember that Lord Palmerston said that only three people ever understood it: one was dead, one was mad and he had forgotten it. I am in the same position. Only three people ever understood that. One is on the Ontario Court of Appeal, one is dead and I have forgotten it.

Notice and comment, first: Your letter asked for emphasis on notice and comment and disallowance. Notice and comment procedures have come a long way. Back in the 1970s, the only procedures that were required in this area were under the Motor Vehicle Safety Act. In the Canada Gazette, all of a sudden there would pop up a diagram of a baby seat or some other restraint device in a car or headlamp specifications, and these were published and an opportunity was given to comment. Manufacturers did comment.



We have gone from a situation of one statute requiring notice and comment. In 1977, we went to a requirement for health, safety and fairness regulations to be published in advance under certain named statutes. Then we went to a more general system of what was called prepublication of regulations, a draft. Now--I am not sure how long your sittings have been going--you will have discovered that you are into a thing called the regulatory agenda. Every year the government publishes a very thick book--I did not bring it with me for that reason; it is like a telephone book--which sets out the regulatory initiatives which each of the departments and agencies of the government of Canada propose for the ensuing year.

Those initiatives, of course, include statutes as well as regulations. They include very useful information, such as the person who is responsible for the work in the department, which is probably the most useful piece of information published. If any of you have had to deal with the government of Canada, you will know you can never find the person responsible for anything and when you do, he is off on a course somewhere. To have a contact and a telephone number is very useful.

There is also an impact analysis and a statement of the alternatives to the proposed action that are to be considered, a date by which you have to have your initial submissions in, a date on which the draft regulations will be published, then a projected date for making the regulations themselves.

I rather think that is about as far as one can push notice and comment procedures. That is all overridden, of course, by emergency situations. What you have to determine, really, in thinking about introducing such a system in Ontario is whether the cost in manpower and money of providing these opportunities is worth the economic benefits that flow, because one point I want to make to you is that notice and comment procedures are really a totally different aspect of regulations from the parliamentary scrutiny of the regulations that get made.

Notice and comment procedures are part of what I could call improving the product. They open the system up to very extensive efforts by lobbyists, vested interests and special interests, and it is open to doubt how many ordinary members of the public ever see the drafts or the regulatory agenda. Most ordinary people do not interest themselves in that sort of thing. What happens is that when the regulations are made and are in effect and they bear down harshly on them, then they bleat.

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So notice and comment really is, if I can put it this way, a sort of an executive mind of activity. It is an activity that the government engages in to improve its legislative output and also, to some extent, to storm-proof the government from outraged cries from vested interests and lobby groups later on. They can always say: "Well, you were consulted. You had your opportunity to put all your comments in and we took that all into account, and this is what we came up with." It diffuses somewhat the anguished cries of interested parties.

It also allows for some sort of outside input into policy matters, and there is a tremendous dichotomy between the policy and the means by which policy is implemented. Who remembers now whatever policies were imposed or enforced by regulation in the 1920s, the 1890s, the 1930s or even the 1950s? The policies are here today and gone tomorrow, but the methods that are used to impose those policies are for ever with us.

By that I mean they are incremental. If you once allow a suspect or dubious procedure to be used or an unlawful subdelegation of power to go unchallenged or unchecked, it is the nature of the bureaucracy always to resort to that procedure again in the future when it has the precedent. "They did this in the tile drainage regulations in 1937 and they have been doing it ever since and nobody has concerned himself with it."

I suppose what I am trying to emphasize is that notes and comment procedures are all very well and they are very attractive, particularly from the government's point of view, but they do not in any way change the imperative need for the legislative body to check the final output for the methods and the means that are used. In the long run, the means used to implement government policy are far more important than the transitory policies themselves.

As far as disallowance is concerned, I make no bones about the fact that I have always thought the power of disallowance is essential, for the very simple reason that politics is about power. Nobody who is sitting on this committee would be bothered to be in the Legislature or sitting on committees if there was no opportunity or access to power. That is what politics is all about. The power is not only gained in the ministerial preferment, although of course everybody who goes into politics, or almost everybody, wants that too. The power is an opportunity to affect events, and that is what the power of disallowance gives.

In the first place, it gives the opportunity for the Legislature to exert itself and overrule what the executive has done. That is number one. It is true there are all sorts of problems in ever exercising that power, and I will discuss those in a moment, but it does create a theoretical possibility for the Legislature to say to the executive, "This particular regulation is so offensive that we are throwing it out the window."

The other opportunity to affect events it gives to the ordinary member is that it allows him to create a real dust-up about a particular offensive regulation. Even if there is no hope of actually having the Legislature vote the regulation down--disallow it--it does allow the ordinary MPP to stand up in his place and take advantage of whatever opportunities there are in the rules to bang on and on and on about a particular regulation, probably in front of a very primed press gallery, and get some publicity for the outrageous nature of the regulation. Unless you have some sort of mechanism by which an ordinary MPP can raise a regulation on the floor of the assembly, that opportunity to affect events by attracting publicity is missing.

Disallowance in its nature is a very simple idea. You just have somebody get up and place in the Legislature a move that a regulation be disallowed. But I will say to you that the people who have the most effective disallowance procedures, is the Commonwealth Parliament in Australia. They spent 50 years refining the technique, because every time they found an impediment to the operation of it, they had to overcome that by amending the Interpretation Act, which is where the disallowance powers are; they had to amend the act.

The first problem they came up against was that it was all very well to move disallowance, but if you could never get the motion voted on, you were no further ahead. The act was amended to provide where the motion for disallowance was brought in and if it was not disposed of, or if it was not withdrawn, then the regulation was deemed to have been disallowed. That is really the underpinnings of the Australian system that, once a motion for disallowance is moved, if it is not voted on, then the regulation is lost.



There have been other refinements that they get into, and I will not bore you with those, but they are all to do with tidying up the procedural questions. If the committee wants them, I can sort of submit a written description of the various motions that were taken, over a period of 30 years, to tighten up the procedure and make it a proof against all attempts by the executive to frustrate the disallowance procedure.

The success of the Australians in doing this is due almost entirely to the fact that the disallowance is exercised by the Senate, which is elected, which is very powerful, and where the government hardly ever has a majority. That is what makes it a successful enterprise in that they have got to the situation now where, as soon as a motion for disallowance goes in, the government gives up, throws in its hand and the regulation is revoked. They have not actually had to disallow anything since 1971.

Disallowance is also useful in an area quite removed from the ordinary scrutiny which goes on in committees of this kind. Here you are concerned with the legality, or you have people here who have been concerned with the legality and the propriety of the regulations before you. There is this other big area of review of regulations on the merits. The position in Ottawa at the moment, as I understand it, is that the government concedes that standing committees, under the new standing order 96, can review regulations on their merits, but it still does not think it is the business of the statutory instruments committee.

The advantage of a statutory power of disallowance, which enables any MPP to move disallowance, is that it allows an MPP to move disallowance on policy grounds and not just on the legal or proprietary grounds that come up in the regulations committee. My own view is that it is a mistake to restrict disallowance to the grounds that can be dealt with by committees such as this, at least if the committee sticks to the traditional grounds for reviewing regulations.

A review on the merits, combined with disallowance, can be very effective. There are many regulations which are quite lawful and in respect of which there are no grounds for objection as to their propriety, and they are not even unusual or unexpected. They are fully within the contemplation of the act, but the policy is regarded as wrong.

To give you an example of the efficacy of disallowance on the merits, I should tell you that the reason the Australians got into disallowance and using it in the 1930s was that the government in the lower House, the Socialist government, did not have a majority in the Senate and wished to reorganize employment on the waterfront by regulation. Twelve times they passed the same regulation and 11 times the Senate disallowed it. That was purely merits. That was all done on the merits. It had nothing to do with the legality or the propriety of the regulations.

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Most recently, you may have seen things in the newspapers from time to time about the introduction of identity cards into Australia. Twice the Senate threw the bill out. The third time round they were starting to feel a bit weak-kneed about throwing the bill out yet again and perhaps having a double dissolution forced on them, but they realized the way the bill was drafted; for once it was drafted on the Canadian style, with the real power being given to the executive by regulation. So they simply announced they would use their majority in the Senate--even if there had been a double dissolution, under the

Australian arrangements the senators would not have taken their seats without (inaudible)--to vote down any regulations made to bring the identity card into effect. That killed the thing stone dead.

There is definitely, I think, a place for merits review, whoever does it, and a statutory power of disallowance is the way you can raise it. I do not know whether you are considering having your committee deal with merits or not, but I will just give you one cautionary tale in which I got involved myself.

There was a set of regulations called the Alice Arm tail and deposit regulations, which allowed a smelter in British Columbia to dump tailings into a body of water called Alice Arm. It went through the committee once. There was absolutely nothing wrong with it. It was brought back to the committee by an opposition MLA who was not on the committee. The committee, unfortunately, got itself involved in what was essentially a merits review of whether or not it was a good thing to allow the mine to dump tailings into the fishing waters of the Nishka Indians. You can imagine when I say that the players who immediately got into it, everyone from the Primate of the Anglican Church down, were around the committee's neck and the committee got itself into a great deal of difficulty over that.

Merits is not really the pigeon of a body which has to operate in a bipartisan way if it is to have any effect on the executive in curing the very many improprieties and illegalities that exist, which may on their own seem very small, but which taken together amount to a great infringement of the rights and liberties of the subject.

The only other preliminary comment I want to make is to take up something Mr. Godfrey mentioned right at the end; that is, that the review of delegated legislation is very hard work. It takes a lot of reading. In the modern world, very few people have time for reading, members of Parliament probably least of all, but it cannot be done without a great deal of work, effort and reading. What usually happens is that a few members of the legislative body become interested in the subject and become the backbone of the operation. Senator Godfrey, for instance, always read his material, and there are others like him, so the committee can function. But if you get to a situation where nobody or virtually nobody on the committee does the work, does the reading and has an interest in the subject, then scrutiny tends to go by the boards.

In many parliaments, there are people who see it as their mission really to take the matter up, and that is where the committees have been successful. It is sort of a tragedy, I think, of the Dominion committee at the moment that it really does not have crusading members who want to take it up. It appears to be dull. If you are going to make it interesting, you have to get into a certain amount of public relations work and organizing things with friendly journalists. It gets back to the question of power.

You will get members of a legislative body to be interested in a review of delegated legislation if you give them the opportunity to affect events. If you do not give them the opportunity to affect events, then really nobody is going to bother with it. There are many ways you can give people control over events. One of them I would mention to you, apart from disallowance, is the state of Victoria. I do not know whether you have been in correspondence with them or not, but they are the most aggressive when it comes to enacting sunset provisions. I know sunset provisions are on this list.



They have a statutory scale now. All regulations made before a certain date die on such-and-such a date. All regulations made in the next 10 years die on a subsequent date. They all have to be reviewed by the subordinate legislation subcommittee, which has to decide in the first place whether these regulations should survive or die. That also gives members of the committee an opportunity to get involved in the actual decision-making to some extent. That makes the committee attractive for people to serve on.

I am not sure whether the Senate got the minister to raise the review of enabling clauses and bills. I am not sure whether you want me to touch that or not, but it too, I think, is critical. Thank God, we spent years trying to get this off the ground in Ottawa against a very hostile government--two governments. It has been very successful where it has been tried on a systematic basis, again in Australia. They had brilliant counsel advise them, Dennis Pearce, who is now the Ombudsman. They concentrate solely on the legality and propriety of the enabling clauses in the bill. They were able to pinpoint a lot of defects in the drafting, defects that would have caused problems later on by allowing the government to make excessive regulations.

There is one problem with reviewing enabling clauses. If you get into that line of business, you must get a reference of the whole bill. Do not just get a reference of what somebody else tells you are the enabling clauses, because when you come to consider them, you will find that in order to make any sense of them or relate them to anything, you have got to go into the other clauses of the bill.

A Canadian committee once was given the remit to study the enabling clauses in the famous Canada Post Corp. bill. It was impossible to do that without referring to other clauses in the bill, which gave the opportunity to the government to say, "You have come outside your remit and we take no notice of what you report." You have to have a remit of the whole bill, with permission to comment on the powers within it to make regulations.

Finally, on the system of disallowance that has been set up in Ottawa at the moment--I imagine you are probably quite familiar with it already--I suspect that Mr. Hnatyshyn had the devil's own job to get even that particular system of disallowance in place. It is a very weak system, in that it is not open to an ordinary member of the House of Commons to move disallowance. There is no like setup in the Senate. It needs to be invoked by the standing joint committee on regulations and other statutory instruments. It suffers the defect, which has become apparent, that governments are still unwilling to have regulations disallowed.

To my knowledge, and I am not au fait with everything that goes on up there, the committee has only put in a report recommending disallowance on one occasion, and that was in respect of a regulation which the government itself admitted was ultra vires. But the government still would not allow that regulation to be disallowed. Under the temporary standing orders, how the system works is that the committee puts in a report recommending disallowance. If that report is not voted down, the report is deemed to have been adopted; and the government bound itself in advance to revoke the regulation. So when the report came in recommending the disallowance, the government was going to vote it down, and in fact had its members in the House of Commons vote for a regulation which the government itself had known was ultra vires.

To avoid that, the chairman of the committee took advantage of a couple of drafting problems in the French version and accepted a remit of the report back to the committee for further study, because it would have been disastrous

had the very first use of these powers been destroyed by the government majority in the House of Commons.

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I think the lesson from that is the intentions of government can be very well made out as far as individuals are concerned--and I do not doubt for a minute Mr. Hnatyshyn, who has served on the statutory instruments committee for over 10 years, tried to get the best system of disallowance he could--but when push comes to shove, the particular minister involved, in this case the Minister of Agriculture, and his advisers will insist on trying to keep the regulation. In the long run, you need a power of disallowance imposed by statute. Then, at least, it is not a temporary thing in the standing orders which can be taken away later on. If you cannot use the statutory power in one particular set of circumstances, you may be able to use it later on.

That is sort of by way of introduction. Of course, I am happy to try to answer any questions you may have.

Mr. Chairman: I want to question you a little bit with respect to the issue of disallowance. You described a situation in Australia which would be perhaps analogous to the drug bill that has been going on periodically in Ottawa where the Senate turned it back two or three times because it did not agree with the merits of what was there. There would be many who would suggest that is not a desirable occurrence, that it defeats the will of the people, at least in Canada where the Senate is not elected, whereas in Australia both Houses are elected.

In the light of that kind of problem and in the light of the fact that we do not even have an equivalency to the Senate in Ontario--we have this committee, and none of us would presume to have that kind of a supervisory power over the Legislature--in what way, with what mechanism would you suggest it would be viable to have a review on the merits of regulations?

Mr. Eglington: Several different methods have been applied, none of them successful as far as merits are concerned. In the United Kingdom--it may still be in the standing orders, I do not know--they started in 1973 with a system where somebody put down what is called a prayer for an annulment of a statutory instrument, and the basis of it was merits. They had what was called a standing committee upstairs. Fifty MPs literally went upstairs to a room and then they thrashed out and argued out the merits of the statutory instrument.

Mr. Callahan: Is that the upper House?

Mr. Eglington: Sort of. They adopted that because they did not want to have the time wasted on the floor of the House of Commons for these sorts of annulment debates. Back in the 1950s and 1960s, sometimes they were still at it at seven or eight o'clock in the morning on prayers for annulments.

The difficulty with this system was they struck these large committees and they argued themselves blue in the face, but they actually had no power to vote on the prayer. It was simply a system of allowing people to debate the merits and hope that they would be able to so expose the demerits of the instrument that the government would in fact withdraw it. After a while people stopped bothering to have these committees struck, so that was not successful.

When you have a unicameral Legislature--and you might want to look at Queensland, which has a unicameral Legislature, the only one in Australia that



does, and where the review of delegated legislation has been the least successful in any Australian jurisdiction--everything depends really on the ordinary back-bench MP. You heard reference to Jed Baldwin. Unless you have a few people around who have a particular hobby-horse and who take it up time and time again and keep at it, you can create all the systems and schemes you like, but they are going to fall into the ground. There has to be the will and the interest to do it.

You mentioned the Australian Senate. Of course, there is usually an opposition majority in the Senate, so the will and the interest exist by definition, instead of being used irresponsibly by any means; but it is there. You do not have to create it. You do not have to run around and get them excited about it, because that is meat and drink to them.

Where you have a unicameral Legislature, it is extremely difficult to see how you could create a structure which will give you review of the merits. You have to have people who are interested in doing it. Then they will do it; they will find some way of raising it on the floor or in front of ordinary committees if you give them that chink, if the reference to an ordinary committee includes, with the regulation, "regarding the merits," but there has to be the interest to do it.

I have not given you very much help, but I am afraid that is the best I can say.

Mr. Chairman: Do you recommend a system whereby, for instance, this committee would recommend something to the floor and require a vote, or would you recommend a system that this committee might recommend something going into the House and if it was not dealt with within a specified time period, a matter might be deemed disallowed?

Mr. Eglington: I never like to see the rights of ordinary MPPs superseded by several specialists on this committee or any other committee. It seems to me that what this committee can do, and it can do it now, is put in a report and condemn a particular regulation of bell, book and candle. But if there is a power of disallowance, the chairman of this committee or a member of this committee can get up and move that the regulation be disallowed. The only way you can have an effective disallowance procedure is to provide that the motion of disallowance must come to a vote and, if it does not, it is deemed to have been carried.

I would not like to think that the right of the ordinary MPP who does not sit on this committee is taken away, so that he cannot stand up in his place and move disallowance of daily herd inspection regulations or whatever they are because, in his view, they are an outrage, not on any legal or technical ground but because the fees are too high or the requirements of where he has to take the cattle for inspection are onerous.

I do not think it is a good idea to foreclose the opportunity of ordinary MPPs to take matters up, and that is really one of the great failings of this temporary ad hoc disallowance procedure in the House of Commons in Ottawa. Only the statutory instruments committee can invoke it.

Mr. Chairman: In Ottawa they now have a procedure whereby committees of the House of Commons can instigate investigations into legislation, into regulations and do anything they want, although I understand that most committees do not, in fact, avail themselves of the power that they have.

Assuming for the moment we consider those powers as potential exercises of a committee, in Ontario there is no such power. The only thing a committee can do in the ordinary course is review those things which are referred to it by the Legislature.

In the case of this committee, there are certain things that are automatically referred and in the case of a couple of other committees there are automatic referrals, but by and large, a piece of prose legislation is referred and is dealt with in a committee and it goes back, and then the committee waits for the next set of instructions.

Are you advocating, in essence, that one way or another, the committee should have an independent power of investigation?

Mr. Eglington: Yes. They do in Westminster and they do in Ottawa and they do in Canberra. I cannot see why they cannot have it in Toronto.

I noticed that when Mr. Hnatyshyn was before the statutory instruments committee talking about all these regulatory reforms the government was engaged in, he made two significant concessions. One was that yes, it was open to the standing committees to review any regulation on its merits, and second, where the statutory instruments committee could maybe put in a report recommending disallowance, that would not be treated by the government as a matter of confidence. They are two very critical concessions for a government to make.

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Mr. Chairman: The last one is near and dear to my heart.

Mr. Eglington: It did not stop them, though. The one time when they did put it in, the government threatened to call out the troops to vote the report down.

Mr. Callahan: Just following up on that, I am not quite clear on the mechanism that is used in Ottawa. We have had a couple of statements made that what happens is: a report is prepared by the committee for the recommendation contained therein, it is filed in the House, it does not have the affect of changing the law but simply has the political persuasion or the moral suasion, because it is voted for in the House and passed, of persuading the minister, perhaps, to withdraw the regulation.

Mr. Eglington: It is a bit more convoluted than that. The report goes in--and I should not use technical terms when I do not know what they mean--and it is sitting in limbo somewhere, wherever these things are in the House of Commons. If nothing happens after 15 days, I think it is, the report is deemed to have been adopted.

In other words, it does not need a vote to concur in it any more. It is deemed to have been adopted and the government has bound itself then to a vote on the regulation or part of the regulation that the report condemns. But it is open to a minister of the crown, and only a minister, to call the report on for debate. If he does that and the House votes down the report, of course, there is no condemnation of the regulation. So the system depends on sort of two initiatives. One is the committee putting in a report, not just drawing attention of the Houses to the outrage but recommending or requiring that the regulation be disallowed. Then it requires the minister of the crown to sit on his hands and allow that report to sit there for the 15 days. Then they will supposedly revoke the regulation.



As I say, to my knowledge it has only been tried once and the government was not prepared to allow the regulation to be destroyed.

Mr. Callahan: I want to get clear on this. We were of the understanding from Mr. Campbell as well as Mr. Thompson and, I believe, Mr. Bernier and Mr. Burnhardt as well, that, even with the 15-day arrangement, it did not change the law.

Mr. Eglington: No, in itself it does not. It requires the government actually to revoke the regulation and there is no legal mechanism forcing government to do that.

Mr. Callahan: OK. That is what I am getting at. It would seem to me that, if it were the case that after 15 days it changed the law, you could actually slide a few in there that would be on the merits that maybe somebody would miss and you would get a regulation withdrawn that way.

I wanted to clear that up because we also have similar situations here with other reports. I know my friend Mr. Philip will disagree with me that those reports, when they are put in, really only have the force of political persuasion.

Mr. Philip: You keep repeating this and this is simply not true.

Mr. Callahan: I am not doing this to put down the Ombudsman, Mr. Philip. I am trying to get at the question of whether--

Mr. Philip: You are working on the principle that if you say something often enough, it somehow becomes real.

Mr. Callahan: Not at all. All I am trying to do is to find out whether we have a mechanism that perhaps needs improvement to reinforce the position of the Ombudsman. That is really what I am getting at, because if it is there and it is not there, we may find that, in a very serious incident, we may need that additional power to ensure that the Ombudsman's recommendations are carried out in law as opposed to just on moral suasion or political suasion.

You talked about the merits and I think you have acknowledged, or I have gathered that you have acknowledged, that really only works in a situation where you have a duly elected body. Otherwise, what happens is that you are interfering, I guess, with the parliamentary tradition of the government setting policy. You are giving the power to other than the government to reject policy through the power of disallowance.

Mr. Eglington: Yes, I think that is true. It is one thing to allow people to ventilate criticism of a policy contained in a regulation. It is another thing to allow the same body which is supposed to sustain the government to destroy its policy. I put a reservation on that. The chairman said this business of confidence is very dear to his heart. It is very dear to mine too. I spent hundreds of pages advising the McGrath committee on what the convention of confidence means.

If we ever get to the marvellous, miraculous situation where governments take a sensible approach to the doctrine of confidence then yes, you can have your body throw out regulations on their merits, just as you can allow them to throw out legislation on its merits, subject always to the proviso that the

government can decide whether the particular regulation involved or the particular bill involved is a matter of confidence.

Mr. Smith: When you say government can do things sensibly, who are you really looking at? The elected? The bureaucracy? I have heard this term so many times and I happen to agree with it to some degree, but I do not know who the real culprit is.

Mr. Eglington: This is a \$1,000 question.

Mr. Callahan: I do not think you want the answer to that one.

Mr. Smith: It is just a short supplementary.

Mr. Eglington: I will say something about it, because I think it is very important. I should say that colouring my answer is the fact that I tend to think Ontario has a good civil service, whereas I tend to think the government of Canada has an oversized, overeducated, overqualified and overzealous civil service.

When we are talking about the government, the decision finally, for instance, as to whether a bill is to be a matter of confidence or a particular regulation is a matter of confidence, clearly the final answer lies with the Prime Minister or the Premier. It is his government that is going to stand or fall on the vote on the swine fever regulations. His view of the thing would be very much covered by what the responsible minister has to say about it. What the minister thinks, particularly in the Ottawa scene, is going to depend to a very large extent--except for a few notable exceptions of strong ministers--on what the permanent officials tell him. In Ottawa, the most senior permanent officials are all appointed by the Prime Minister too, so the minister is sort of trapped with top officials he cannot get rid of. He is stuck in a bit of a box in that respect.

The civil servants in Ottawa, and I will only speak about them because they are the only ones I have ever had any experience with, have agendas of their own. They have schemes for all sorts of conditions or circumstances in their little bottom drawers. When the situation arises where they think they can spring one of these schemes on a minister and get it into place, out it comes from its little bottom drawer. The minister takes it up and becomes personally committed to it, the government becomes personally committed to it, and away we go. Governments are most unwilling to allow the loss of any of these grand schemes.

Mr. Chairman: You are not a screenwriter for Yes, Minister, are you?

Mr. Eglington: You can, as I did, splurge ink over all these hundreds of pages about the doctrine of confidence, and you can demonstrate chapter and verse that almost everything ministers say in their respective Houses about confidence and the government falling is utter hogwash. The plain fact of the matter is that ministers believe what they say because they do not know any better. The civil servants tell them that as well about confidence. Ordinary MPs believe it, most of them, either because they do not know any better or, let us face it, they are not in Parliament to sit on the back bench for all their lives. So there are a lot of dynamics against governments being prepared to lose either bills or regulations on the merits.



Mr. Callahan: That is a good answer to the supplementary. I think the chairman is smiling over there, having great delight over it.

Mr. Chairman: I have read his article, so I have some sense of what his views are.

Mr. Callahan: I am going to read his article too to find out where yours came from. I suspect it came from him.

The next thing is that we are told Ottawa's committee was nonpartisan. In other words, unlike many other committees, you vote a consensus or you do not do it. Was that your perception?

Mr. Eglington: The Ottawa committee in my years did not always proceed by unanimity. Occasionally, there were recorded votes. I can remember the first big report that was put out, the one that really scared the government.

Mr. Callahan: Were they on partisan lines, though?

Mr. Eglington: No. That was adopted over the recorded opposition of the parliamentary secretary to--I think it was the Minister of Justice. At the beginning, the government kept at least one parliamentary secretary on the committee, keeping watch on the brief and what all those dreadful people were up to.

Later on, for instance, Alice Arm, the other one that I mentioned, did come very close to dividing on partisan lines. In fact, except that the government supporters got lost on the way to the committee room, the decision the committee took would have been the opposite.

It gets very dangerous when things divide up on partisan lines. That has been one of the great failings of the Queensland committee. They have been unable to get over the partisan nature of it. But it is not impossible. Politics in the Australian Senate is larger than life, carried on with no quarter asked and none given. Yet on the regulations and ordinances committee, which usually has a government majority on the committee and a government chairman, they still manage to proceed on a nonpartisan basis.

The only time they got into trouble on that in recent times, a decade since the Second World War, was when they got into this dangerous business of answering the government in advance. It gave them a set of regulations and said: "Here, take a look at this. What do you think?" They compiled a set of regulations relating to the maintenance of public order in the capital. There had been a riot by the women against rape and the peace movement and so on, and they came up with these draft regulations. The committee, by a majority, decided that the draft would do, so the government made the regulations.

Then in the nature of things, they came back to the committee as made regulations, and the people who were opposed to it the first time around renewed their opposition. They happened to belong to one political party. They put down their own motion for disallowance in the Senate against the recommendation of the regulations committee. The Labour Party at that time had a majority in the Senate, the government was non-Labour, and the Senate was all set to disallow the regulations over the recommendation of the committee when Senator Tate, who was one of the opponents of the regulation, decided to abstain. It was a day the Premier had not called votes on the floor and the president cast a vote in the negative.

Partisanship, once it gets in, is very hard to get back out.

Mr. Callahan: A final question, if I may. We do not have in our standing orders the review under the Charter of Rights, but Ottawa does. Is not the review under the Charter of Rights one step into the merits? Have you not gone beyond the strict interpretation and whether it is within the statutory power to the merits when you are making a determination such as that?

Mr. Eglington: In the first place, I had gone before that got into the criteria, so I never had to try to operate it. I should also say I am one of those few people who seem to think that the Charter of Rights is a monstrous carbuncle on the body politic and will eventually have to be lanced.

Mr. Callahan: I agree.

Mr. Eglington: If you had asked me that question four years ago, I would have perhaps said that those fears were exaggerated and that the Charter of Rights could be dealt with as a legal matter. Having seen what the courts have done with the Charter of Rights in the ensuing years, I can say only that they are applying a merits review. The merits review they apply may have a legal foundation and be formed by history and so on, but it has legality only because it is the courts that are doing the review. I must confess I agree with you. I think that to review regulations on the basis of the Charter of Rights opens the door to a lot of difficulties.

Mr. Philip: I want to take up just one question on the problem of the partisanship on nonpartisan committees. One of my colleagues from one of the other parties has argued on another committee, which is supposed to be and is, I think, nonpartisan, that having a parliamentary secretary to a minister sit on the committee in fact adds to the partisanship of the committee in that parliamentary assistants or parliamentary secretaries, as they would be at the federal level, should not sit on a nonpartisan committee when that committee is dealing with a matter of interest to the particular ministry he or she is associated with. Would you agree with that position? You referred to the Ottawa experience.

Mr. Eglington: In theory, an office holder or a place holder really has no business on a nonpartisan committee because, after all, he is in receipt of emoluments to do the crown's bidding. It is very hard to see how he can leave that outside the door.

Mr. Philip: He also hopes to be the minister of that.

Mr. Eglington: Exactly. As far as the practical side of it went, between 1972 and 1979 there were, I think, three parliamentary secretaries to the Minister of Justice. They sat on the committee. They tended always, if I can put it this way, to make sure the government's view was fully ventilated. On two occasions, I think, they insisted on having it so recorded in the proceedings on those decisions. That was taken. It was condemnatory to the government.

In the case of one of the parliamentary secretaries--I do not know how I can put this without being indelicate--the other members of the committee--Eugene Forsey throughout, Gordon Fairweather, Bob McCleave and Jed Baldwin--particularly the chairman of the day, were very strong personalities. They tended simply to dismiss the particular individual as a sort of gadfly and not pay much attention anyway.



In the case of another parliamentary secretary, however, he really was an up and coming, rising star--he became a senior cabinet minister--and his presence on the committee always had to be taken into account. Looking back on it, I think we were very lucky to escape partisan warfare as a result, but I think it was simply that apart from the parliamentary secretary, the Liberal members of the House of Commons ignored the committee. In other words, he never had any reinforcements there. Whenever he wanted them, he would have to get them.

The only time he bothered to do that was when the ministers came as witnesses; he always made sure that there was a phalanx of government MPs in the room--these were the days when I think we had 20-something members--to sort of have a nice receiving, clap for the minister when he came in. Apart from that, the only Liberals who ever attended the committee meetings were Ken Robinson, the member for Toronto-Lakeshore, and the parliamentary secretary. The others just gave it the go-by because, I suppose, their thinking was, "We get no Brownie reports for stirring up trouble with the government, so why go to that committee where that is what they do." The Liberal senators, on the other hand, were there in force, and they are the backbone of the upper house. If you consider that a nonpartisan committee is essential, then obviously you take all possible steps to keep partisanship out of it.

Mr. Philip: I wanted to get in just briefly with a couple of questions on sunseting. You talked about one of the Australian jurisdictions where they have an automatic sunseting, which is rather appealing, but if you look at our standing orders, the scope of this committee is fairly structured and fairly well defined, unlike certain other committees of the House which give themselves, or have been given, fairly wide-ranging authority to look at practically anything that they see fit within their jurisdiction.

I am wondering about an addition under our standing orders that would give us the power to review--I do not know the exact words we would use--the efficiency operation of regulations, to find out whether old regulations are being enforced, whether they serve a useful purpose and whether they are efficient in their operation. If it is costing you \$3 to hand out every \$1, then it may not be a terribly efficient regulation; or \$3 to collect every \$1 is another example, that kind of thing.

Would that serve the same kind of review that perhaps a committee like this should, with the help of staff and research, be reviewing a block of regulations that were established from 1900 up to 1930, as a start, in a particular ministry, and recommending dissolution of certain regulations?

Mr. Eglington: The short answer is yes, but there are difficulties with it. I have just asked the secretary to photostat the report of the Victoria committee, because that is basically what they do; they are reviewing them in blocks.

When disallowance was introduced in the Australian Parliament in 1904 in the first place, Colonel Gould was the senator who introduced it. I might say that both Houses can disallow, but the House of Representatives has never bothered. That is precisely what he had in mind. In those days he was not so much concerned about new regulations. What he was really wanting to get at were regulations that were in force and which by their operation had been found to be obnoxious, unnecessary, irrelevant, or costly.

Mr. Philip: Or inoperative.

Mr. Eglington: Yes, or extinct. I do not suppose many of them were really extinct. That is what he had in mind. He got headed off at the pass by the government of the day, which allowed them to have disallowance on new regulations.

The review of old regulations, and whether they serve any useful purpose and whether they are too expensive and so on, probably lends itself more to a nonpartisan approach than new regulations, because the new regulations represent the initiative of "my ministry." "My ministry has decided that this policy is essential and, by Jove, I am going to have these new regulations because the regulations that my ministry is administering because of that dumb cluck who was the minister 15 years ago does not really reflect on me personally."

You may very well be able to maintain a relatively nonpartisan approach to those. I cannot speak about Ontario because as a legal practitioner I have only had occasion to consult the obvious ones, like land registry regulations and so on, but the Canadian ones that I am familiar with are literally like this. They are chock-a-block with provisions which have long since exhausted their usefulness and are full of provisions which are annoying, niggling and so on, which everybody would like to get rid of, but it is so complicated to get an amendment.

Mr. Philip: It might keep lawyers employed then and run up the cost of operation for a lot of businesses as well.

Mr. Eglington: If you want to change a regulation in Ottawa for some tiny, little amendment, it is a nine-month to 12-month exercise. I am not sure what it is like in Ontario, but I suspect it is nowhere near as long. There will be very many people actually administering regulations. I think you would applaud someone coming in at the Legislature end and getting involved in the process of cleaning up the mess and debris of the last 100 years.

Mr. Philip: So your answer is that it would serve a useful purpose if that were done? One of the things that occurred to me is that I think it is useful for the chairman of a nonpartisan committee at least to give the committee some experience on noncontroversial issues initially, in the early part of the Parliament, so they get into the habit of operating in a nonpartisan way.

In fact, this kind of thing would reinforce, in the behaviour of members on the committee, the nonpartisan operation of the committee and give them some success at the same time in dealing in a nonpartisan way and getting some results. It just strikes me that waiting to try to get some kind of legislation which is going to have an automatic sunset provision for regulations is probably a long time off, whereas getting a change in the mandate of this committee to review some ancient history would probably be a lot easier to get.

Mr. Eglington: There is just one comment on this I would make, something that has just occurred to me; Mr. Godfrey may have mentioned it. A lot depends upon how you operate, the procedure of the committee. The committees in Ottawa proceed in this almost tribal fashion: You divide up on both sides of the table, and this side's man gets five minutes, then we go over to this side and get five minutes; it does not matter if he has not finished his questions or if he gets cut off midstream.

Mr. Philip: Not all committees are like that.



Mr. Eglington: That is how most of them operate.

Mr. Philip: In the committee on public accounts, you can--

Mr. Eglington: And when the statutory instruments committee started, that system was never used. There was not one side, then the other side. There was not this alternation on party lines. That actually had a great deal to do with--

Mr. Chairman: Mr. McCague, Mr. Sola and then Mr. Callahan.

Mr. McCague: Everybody who has come to us from Ottawa or who has Ottawa experience has mentioned that the committee is impartial. I presume you agree with that.

Mr. Eglington: I should only speak of experience to 1982. Certainly in those years, the committee acted in a nonpartisan way, with the single exception of the one regulation I mentioned, the Alice Arm tailing deposit regulations, where the committee got into difficulties on partisan lines.

Mr. McCague: Mr. Philip has mentioned two committees that, in his opinion, are nonpartisan: the standing committee on the Ombudsman, I presume, and the standing committee on public accounts here in Ontario. I think the nonpartisan committees you are referring to are made up of members of the Legislature and an upper House. Could you comment on whether you believe that a provincial Legislature, with just the one level, could have an impartial committee to consider regulations?

Mr. Eglington: It is harder--certainly, the Queensland experience shows that--but it is not impossible. It depends, I would suggest, on the will of the Premier. People, whether they are civil servants or politicians, in any organization, generally do what they think is expected of them. If the message comes down from the top that this committee is to operate in a nonpartisan way, then at least as far as the government supporters are concerned, presumably that is the way it will operate. For the opposition it is a little more difficult. That is why it is so important really to keep people off merits and on legalities and proprieties. They are not then attacking the policy of the government and not then inciting the government members of the committee to rush to the defence of the wounded ministry.

It is harder, I agree, in a unicameral assembly to establish a committee which is nonpartisan. I do not believe by any means that it is impossible, but it will not be done if the ministry does not want it to happen, which really means that the Premier does not want it to happen.

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Mr. McCague: You are no doubt familiar with the general makeup of committees in the provincial legislatures. It bears some relationship to the membership in the House. Do you have any different suggestion for a regulations committee, for instance, that is going to have some increased powers? Should there be a difference in representation? Should it be equal from each party in the House? Have you any comment on that?

Mr. Eglington: Yes, I think that is unfortunate. It is conceding in advance that you cannot have a nonpartisan committee, and it is using an artificial means to overcome a problem which you admit already exists. It is a simplistic solution, I think, and one that is calculated only to produce the

reaction, "Well, you have six people on here when you should have only three, so maybe you had all better shut up." I think it is far better to work at the real job of having a nonpartisan committee.

I am not sure how committees are struck in Ontario, but in Ottawa the party House leaders have a great deal to say on who gets to sit on what committee. There are clearly people whose natures makes them unsuitable for sitting on a nonpartisan committee. The House leaders and the whips know, or at least ought to know, who those people are and create means to keep them off. I think that is far more important than trying to arrive at whether there are six of one and half a dozen of the other.

Mr. McCague: Thank you. I might survive.

Mr. Sola: I was intrigued with your statement on providing notice. The way I understand it, you seem to think it helps mostly the lobbyists and not the ordinary public. Do you think that helps the committee and the lobbyists involved, or is it actually a hindrance to the operation of the committee?

Mr. Eglington: I will speak only from experience. I do not know that the question can be answered on a theoretical basis, because theoretically, I suppose, the more input and the more information you get, the better informed you are and therefore the better decision you can take.

Lobbyists, if they are any good--and they go out of business quickly if they are not--are masters not only of putting their point of view but of hiding and camouflaging and burying any other point of view. If the committee gets into a situation where it starts hearing from lobbyists, it gets into a lot of trouble, because it does not know who to call to get the opposite point of view without calling the men from the ministry, who by and large, in my experience in Ottawa, were not very good as publicists or propagandists anyway.

We did from time to time have people who wanted to appear--the Toronto Stock Exchange, the courier companies, those people involved in the fishing industry; those three come readily to mind--but what they always did when they came was to end up talking about the merits of the regulation. Our reaction was always the same: "What do we do now? They are in front of the wrong body. They should be over at the miscellaneous estimates committee," I think it was, which was doing the post office bill or, "They should be at the fisheries committee," or whatever. Now we have this thing, filled with all this criticism of the policy of the regulations.

It is very rare for an interest group or a lobby group to be particularly concerned about the legality or propriety of a regulation. Their concern with the policy of it is how it affects them, usually how it affects them in the pocketbook. That is what they are in business for. Some people complain about regulations because they take away permits without a proper hearing and that sort of thing, but that is usually not what the lobbyists are concerned about. Lobbyists are concerned about setting up a permit system in the first place or, equally, abolishing a permit system if they do not want competition let into their industry.

I do not know that a committee of this kind is particularly helped by having lobbyists and interest groups appear in front of it.

Mr. Sola: In other words, would your recommendation be that notice is not really necessary for this committee to function?



Mr. Eglington: You have the raw material in the regulations. What the committee has to bring to bear on it is its intellect.

Mr. Chairman: The issue of notice and comment goes to the heart of the regulatory process but not necessarily the scrutinizing element of this committee.

Mr. Eglington: It is important for the government to know the various pros and cons of deregulating or reregulating an industry, but I do not think that is relevant to this committee. What this committee has to grapple with is this: They decide to regulate it in some way--chicken hatcheries or whatever it is; they are regulated. Now, have they provided all the necessary safeguards for individuals in the way in which they have set up the regulatory system?

Mr. Callahan: Just a followup on that in this respect. We have heard that prepublication is important so that people have notice before it becomes law. I would like to draw on your experience in Ottawa, and I am sure it is mirror-imaged in other legislatures, that the whole principle of regulations, the sort of catch clause at the end of a statute where the Lieutenant Governor in Council may make regulations was originally limited to things like forms or where they did not really affect the rights of people, is that more and more today that clause is becoming the catch-all for doing a lot more than that, affecting people's rights. First, I should ask you if that was the observation you made.

Mr. Eglington: The last thing is called the basket clause now. One of the reactions in Ottawa, after the statutory instruments committee, which I regarded myself as a pretty ineffective committee--one of the reactions in the parliamentary drafting section of the Department of Justice was that the best way to deal with this committee was to stop enumerating enabling powers at all and simply put in the basket clause.

Mr. Callahan: So it can make any regulations needed to enforce this act.

Mr. Eglington: The answer to that simply is that if you are sitting on a committee like this and you have extensive regulations that affect people come before you and they are made under a basket clause, you say this is an unusual or unexpected use of power and this is something which should properly be put in legislation, not in regulations, because the basket clause was designed to enable regulations to be made prescribing forms, setting up rather minor administrative procedures of one kind or another to implement the act. It was not meant to be a clause which would hand over to the government the whole policy matter of the legislation.

Mr. Callahan: You get that in some of them. We looked at one yesterday, I think, where the final clause (h) or something said something like "...and any other matters that are required to carry out the objects of this act."

Mr. Eglington: That is even easier to deal with, because if it follows an existing list of enumerations, it is absolutely clear that it can only be used for minor administrative matters. Where you get a stronger argument on the other side is where there is no enabling power except one basket clause which says the Lieutenant Governor in Council may make regulations to give effect to this act or something of that kind.

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Mr. Callahan: You have said to Mr. Sola that you do not think we need prepublication. Would you agree that in cases where the committee found that a regulation which was going to come before it would affect rights, as opposed to forms or what have you, it should be prepublished to allow groups to respond, or do you still say our function is only to--

Mr. Eglington: When I was answering that question, I was addressing myself to whether prepublication was of assistance to this committee in its work. Whether prepublication or notice-and-comment procedures are good things in themselves is a different matter.

What I started off this morning by saying was that this is really a totally different aspect of the problem; that is, improving the government's product by taking into account things which presumably it has not thought of, because people respond to the notice and say, "But if we have this particular system of regulation, you overlook the fact that every chicken hatchery is going to close up and move south of the border" or something of that kind.

That is a question of whether you arrive at a good law from a policy point of view. That is really a different matter from what the committee considers. The committee can operate quite comfortably, I think, without any notice-and-comment procedure at all. The public, however, may be much better served if there is notice-and-comment procedure.

Mr. Callahan: So that really the notice of publication is an opportunity for the public to come and address the question of policy?

Mr. Eglington: The danger is that it is of no help to members of the public. It just gives more opportunity for lobbyists and pressure groups to come and in fact makes government harder because the government has then created a stick with which lobbyists and pressure groups can beat it.

You have to remember that notice-and-comment procedure is another one of these almost peculiarly North American phenomena. It existed in the United Kingdom until the Great War. Then, in the flood of regulations in the Great War, it just got abandoned and was never revived. Similarly in Australia. We have adopted it here largely because of the United States. So much of what is embodied in their system is embodied in both acts and regulations made by independent regulatory agencies, like the Interstate Commerce Commission. The American law of due process requires that they have all this notice-and-comment stuff as part of the process of making the regulation.

It is really the American system, from which this idea comes, that is more relevant. Bodies like the Canadian Transport Commission and the Ontario Energy Board are actually (inaudible) to the Lieutenant Governor in Council, but that is the genesis of the idea. The idea may be a very good one, but it does give added weight and opportunity to the very vested interests that are to be regulated.

Mr. Callahan: So it really is effective only in a double government, where you may have the Senate being one party, and is not really effective in a parliamentary sense?

Mr. Eglington: It is a good thing, I suppose, but it has risks. The risks are that you are giving pressure groups and lobbyists an added opportunity of making government more difficult.



Mr. McCague: This may be a difficulty, but there is a lot of difference between notice and comment and having to submit what you have to say in writing versus being able to appear before a committee. Do you think you can have notice and comment and still deny the right to appear?

Mr. Eglington: The short answer to that is you can do anything you like; but if you are going to have a system where every regulation is prepublished in draft or notice is given of its making, and you are going to give everybody an opportunity to appear before a committee of the Legislature, you have a recipe for taking three to four years to make the regulations.

Mr. McCague: Correct. I guess my question is, can the same thing be done by that having to be in writing rather than by appearance?

Mr. Eglington: That is in fact my understanding of how it operates in Ottawa. The notice or comment does not go before any parliamentary committee; it goes to the government department, advising to make the regulation.

Mr. McCague: What I am getting at is, can you give notice and accept comment in writing and not have them here as witnesses?

Mr. Eglington: Are you talking about regulations that are to be made?

Mr. McCague: Yes.

Mr. Eglington: That is my understanding of the way it in fact operates. They publish the various notices in the Canada Gazette, and if you want to respond to a notice, you put in a written submission to the Department of Agriculture or the Department of Transport or whoever is involved. It does not go to any parliamentary committee or any quasi-judicial body.

Mr. McCague: Of course, the tendency of governments, as you probably know, is to offer the opportunity to appear in person, and that is a difficult one for a government to deny. I know there would be a lot more work to it, but it seems to me that the notice and comment opportunity is preferable to the system we have now. If that is the case, probably you have to limit personal appearances but accept everything in writing, which makes work, I know, but everybody feels good about it.

Mr. Eglington: If you want to do it by hearings, you are going to end up precisely with the American system where they have these various adjudicative agencies, as they are called, which in effect have endless, very, very extensive hearings before they make the rules. That is the way the Canadian Transport Commission and the Canadian Radio-television and Telecommunications Commission operate.

Mr. Callahan: I am told it is about \$325 an hour or something like that.

Mr. Sola: In your experience, do the pros outweigh the cons of giving notice in the Ottawa experience?

Mr. Eglington: I really cannot answer that question, because the system was not general until about 1981 or 1982, and then the new system which has come in of requiring not just prepublication of the draft regulations but prior notice, first of all, of the intention to regulate, then allowing time for submissions on that and then coming up with draft regulations and

publishing those for comment has only been in operation for 15 months. I have had no exposure to it, so I do not know.

The important thing here, though, is that they did seem to grasp that if you publish draft regulations, the matter is already set in concrete, because the work has been done, the rules have been drafted, they have been vetted legally. The civil servants already have a set of regulations and they will not want to have them changed. They do not want to go over all that ground again; they may have spent four years coming up with these things.

You publish in the Gazette and you get a whole lot of people who write in and they want to change this subparagraph and that subparagraph. It is very hard to persuade anyone to do that. That is why they went to the system of the regulatory agenda and notifying, "We intend to make regulations governing such and such a subject, and these are the alternatives we have considered and are considering, and our plan is to have draft regulations ready on such and such a date." People can get in and make submissions before the regulations actually get written. That is the theory of it.

Mr. Chairman: I have a couple of questions from Mr. Dekany. I think that is going to be all, unless anybody else is feeling strongly about it.

Mr. Dekany: Mr. Eglington, getting back to the question of disallowance, the fairly new Regulations Act in Quebec has a provision for disallowance which does not seem to be limited in any way. It provides in section 21, "The National Assembly may, in accordance with its standing orders, vote the disallowance of any regulations or any prescriptions of a regulation."

Would this be a provision that you would recommend in the Ontario legislation as a way of having an opportunity for members to vote or to bring before the House motions on the merits?

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Mr. Eglington: Not if that is all it says, because merely to provide for a power of disallowance is simply to write a brutum fulmen, an empty thunderbolt, into the law. You have to have some sort of mechanism by which the government has got to be forced to allow the matter to come to a vote. Otherwise, it just goes on the order paper, and there it rests and dies.

I am not familiar with the Quebec act, so I do not know what else is in there, but there has to be a more complete mechanism. The most complete mechanism in existence is the one in the Australian Interpretation Act. I have it here with me, if anyone wants a copy of it. If you are going to do this, you have to do it properly. If you, for once, get a government that is prepared to allow parliamentary time for an act to create the power of disallowance, you should seize the opportunity and do it properly because you may never get a government willing to contemplate the idea again.

Mr. Dekany: Briefly, do you have any comment on whether this committee should be reviewing policy directives as well as regulations?

Mr. Eglington: Policy directives are of two kinds. One kind is truly policy, the sort of thing the Canadian Transport Commission and the Canadian Radio-television and Telecommunications Commission puts out, and the other is more in the nature of subsidiary rules. Those subsidiary rules are crucially important to the ordinary citizen and should be reviewed by somebody,



definitely. A lot depends on how you define regulation and what it is you are going to have scrutinized. But if you create a system of review for delegated legislation and disallowance of delegated legislation, there is always a tendency over time for civil servants to devise other instruments or documents, which fall out of your definition, in which they will embody rules that affect ordinary people, but which will be done under the guise of instructions to the staff.

If you are in a Canadian prison, for instance, the things that affect your life most closely are what are called the directives of the commissioner of penitentiaries, all the disciplinary rules, the disciplinary procedures and so on, and yet those things are classified as instructions to the staff. I do not know that anyone has ever made a catalogue of policy directives, but they cover everything from real policy to putting out the departmental cat at the end of the day.

Mr. Dekany: Did the Ottawa committee, while you were involved with it, ever attempt to get a higher profile, not on merits, but on contacting the bar, for example, as a way of making members of the public aware that if they have complaints about the legalities of regulations there is a body they can go to?

Mr. Eglington: Up until 1979 the committee did. Into its first four or five years, it had a vigorous and rather high-profile chairman. Lines of communication were opened to the bar. I must say the bar was very reluctant to do it, but that is a matter for the bar. Decent relations were enjoyed with the press and an effort was made to get publicity.

After 1979, it was just a matter of personalities. The management, if I can call it that, simply did not see the need, or if it saw the need, it did not know how to give the committee a higher profile. I think that was a fatal weakness, because you have to have something going for you to counterbalance the civil service and the ministry, and in this world that something is publicity.

Mr. Chairman: Mr. Eglington, you have been an excellent witness. You have covered a tremendous amount of information. As well, you have provided insightful opinions. I am not sure if I was more delighted to hear your opinions about regulations or about the question of confidence in the House, but they have been much appreciated by myself and other members of the committee. I want to thank you for your time and wish you well as you continue to fight for all those things that are right.

Mr. Eglington: Thank you. I was surprised when I was trying to get ready for this, not just at how much I had forgotten but how interested I still was in the subject. I enjoyed the opportunity.

Mr. Chairman: For members of the committee, I have some information of interest, I think, in terms of our scheduling.

For Thursday, March 31, I can confirm that the Honourable Mr. Sorbara will be attending at 10 o'clock in the morning. I understand as well that Suzanne Wilson from the executive council office will also be attending. This is something that arose yesterday. I would suggest that the provision we have in calling for a review of material in camera on that day be stricken and that we have Suzanne Wilson in lieu of of that. I understand from Mr. Kaye that he will be able to have for us some materials for our consideration, not to consider that day but so that we will receive it by that morning, to then consider in April.

For this afternoon, the scheduled time of two o'clock is cancelled, although we are now a full hour over when we would ordinarily leave off.

For tomorrow afternoon, I am going to suggest we delete that. There is a possibility that the morning session will run a little late. Depending upon whether it is considered necessary, Mr. Dekany may summarize some issues that we have not had total presentations on. I am thinking in terms of Quebec and what takes place, although it is in the materials, but we will play that by ear. I think that is the most effective way of dealing with it, according to how much time it takes tomorrow morning. Failing dealing with it tomorrow morning, if it seems appropriate, we may be able to fit it in next week.

I would anticipate, therefore, that next week we are not going to be meeting on Monday; there does not appear to be any need to. We are going to have full days on Tuesday and Wednesday, including the additional one at 4 p.m. on Wednesday that I told you about yesterday, as well as Thursday morning. People will be free Thursday afternoon.

We have not yet heard for sure whether the Ombudsman committee is sitting on the morning of April 6, and that is of some relevance to some members here, I think Mr. Lupusella and Mr. Philip; but if we can clear the boards so that all the people who have been participating so far are going to have a legitimate opportunity to participate on the morning of April 6, I hope that we will be able to start making decisions about how we want the report to look and that the material Mr. Kaye provides on March 31 would be relevant to that process. We will not necessarily make final decisions, but we would be able to start the discussions.

Mr. McCague: I suggest that you do not have authority to sit on April 6 and I would discourage you from seeking authority, because I would suggest that each party will probably be having a caucus that morning prior to the sitting of the House at 1:30.

Mr. Chairman: April 6 is the Wednesday, not the Tuesday.

Mr. McCague: Oh, sorry; Wednesday is our regular day. We do not have authority for that either. I have heard this discussed in another committee.

Mr. Chairman: My understanding was that we did. It is not that I am arguing for it, it was just that we were going to get it whether or not I asked for it.

Mr. McCague: You may be right.

Mr. Chairman: If we do not do it April 6, then we are looking at doing it whatever day we would ordinarily sit next.

Mr. McCague: I am sorry, I am wrong on the dates. We may get authority on April 5 to sit April 6. Do we have authority?

Clerk of the Committee: It is my understanding that the committees started when the House came back and they have their normal sitting days. I will have to check that again. I know I checked it several weeks ago now.

Mr. McCague: The other committee said it does not have authority to sit until it gets a motion of the House.

Mr. Chairman: We are trying to find out. The problem is that some decisions about this stuff just are not likely to be made until some time in the next week.



Mr. McCague: I am sorry to be wrong on the dates; it is the Wednesday.

Mr. Chairman: As far as I know at this point, we will be sitting on the Wednesday, but if it is not that day, then the next day we ordinarily sit, I am proposing the first day we come back we would deal with the issue of regulations rather than private bills. In fairness to some of the people with private bills, we are going to have to start hearing them in April, I think. That is when we will have to look at how many extra days we will want to deal with regulations on Wednesday afternoons, or however we want to do it.

I want to make sure, speaking personally, that we maximize the opportunity for people to take part in the decision-making who have been taking part in the hearings, one way or another, whether they are "usual" members of the committee or not, in fairness to the people who are making the effort to hear the evidence and make the decisions.

If there are no other questions, Mr. McCague, perhaps you can relay to Mr. Pollock that he will not be required tomorrow afternoon. I will make sure that Mr. Philip knows about it, and I will take care of the other Liberal members.

Interjection.

Mr. Chairman: We are not meeting this afternoon either. You are a free boy.

The committee adjourned at 1:01 p.m.

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STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

REGULATORY PROCESS

THURSDAY, MARCH 24, 1988





STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

CHAIRMAN: Fleet, David (High Park-Swansea L)

VICE-CHAIRMAN: Beer, Charles (York North L)

Cleary, John C. (Cornwall L)

Fawcett, Joan M. (Northumberland L)

McCague, George R. (Simcoe West PC)

Pollock, Jim (Hastings-Peterborough PC)

Pouliot, Gilles (Lake Nipigon NDP)

Ruprecht, Tony (Parkdale L)

Smith, David W. (Lambton L)

Sola, John (Mississauga East L)

Swart, Mel (Welland-Thorold NDP)

Substitutions:

Callahan, Robert V. (Brampton South L) for Mr. Beer

Lupusella, Tony (Dovercourt L) for Mr. Ruprecht

Mahoney, Steven W. (Mississauga West L) for Mrs. Fawcett

Philip, Ed (Etobicoke-Rexdale NDP) for Mr. Swart

Clerk: Manikel, Tannis

Clerk pro tem: Carrozza, Franco

Staff:

Kaye, Philip J., Research Officer, Legislative Research Service

Dekany, Andrew C., Legal Counsel

Witnesses:

Individual Presentations:

Janisch, Hudson N., Professor, Faculty of Law, University of Toronto

Bogart, William A., Professor, Faculty of Law, University of Windsor

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Thursday, March 24, 1988

The committee met at 10:03 a.m. in room 228.

REGULATORY PROCESS  
(continued)

Mr. Chairman: I see a quorum. I just want to remind all the members of the committee that we are not sitting this afternoon. I believe that we are anticipating, or there is some possibility that we are going to have, a third person for Thursday, March 31, and that is Mr. Tucker, who is the past registrar of regulations. That should keep that a busy day.

We have before us Professor Hudson Janisch from the University of Toronto. Professor, the format that we have been using is to request witnesses such as yourself to make a presentation on whichever issues you would like. I do have in front of me a written submission. You can read from it or refer to it as you see fit and then, subsequent to that, the members will pose questions to you.

HUDSON N. JANISCH

Mr. Janisch: Thank you very much, Mr. Chairman. Let me say how delighted I am to be here. In the work I do in administrative law and both my research and my teaching, I try to emphasize to my students just how important the subject of regulations really is and how important effective scrutiny can be in modern government. This committee does not receive the recognition it should. Scrutinizing regulations is not exactly a media grabber, yet it is critically important. I hope that over time that importance will be recognized.

I suggest in the brief that we do live in an age of skeleton legislation; that is, whatever is done in the chamber next door is really in skeleton form. It just sets out the very basic principles. What I refer to as the little laws create the cutting edge; the real impact of law is in the regulations, not so much in the general statute itself. It is a terrific irony for legislative bodies such as this to recognize that in fact the cutting edge of the law is not what they enact but is what is subsequently enacted by others.

This creates something of a paradox and, if you do not mind, I will just read the little paragraph on the very bottom of my first page. To me, it captures just what we should be concerned about. The extract is from Lord Hewart, writing over 50 years ago. He says:

"The paradox is that it is precisely in the labyrinth of departmental legislation that the citizen, if time permitted, might find the particular order or prohibition which should direct his conduct and which, if it is to be ignored, is ignored at his peril. As a rule he is not interested in what may be termed the immensities and eternities of legislation or of jurisprudence. He is concerned with the particular, because it is the particular which has to be done."

I think that just captures it. The actual impact of law on the citizen all too often is in the regulations, not in the overall statute.



The challenge that I suggest is the need for delegation rather than abdication. This body must not lose control over the use that is made of the power that it grants regulation-making authorities. Also, and this is a subject that I want to emphasize as strongly as I can, there is the notion of public accessibility. It is one thing to pass these regulations--and I have brought by way of an exhibit the regulations that were passed in this province in 1987, to which I will refer to in just a moment.

Mr. Chairman: For the record, perhaps you can just indicate the amount of paper.

Mr. Janisch: A large package.

Mr. Callahan: Perhaps in inches.

Mr. Janisch: My estimate would be that it is six inches tall. It contains 752 regulations. I will be commenting further on that in just a moment.

Mr. Chairman: I would say that is a modest estimate of its height. I do not know how many pounds it would be.

Mr. Callahan: Actually, we should have it on the record in metric.

Mr. Janisch: I think we should weigh it, but we agree it is an impressive bulk.

I would argue that there is a dual responsibility in the Legislature. One is to continue as you do, scrutinizing regulations to make sure that the power that is granted is not abused. The other is to make sure that the citizen has some sort of access to this mass of legislation.

I speak on page 2 of the overall, astounding success in the United States of notice and comment, the first five items on your agenda. I think it is largely recognized that notice and comment has worked. Professor Davis, under whom I had the good fortune to study at the University of Chicago, has assessed the Administrative Procedure Act and has written of it, "The system is simple and overwhelmingly successful."

The big thing that you have to avoid in a notice and comment procedure is disappearing into what I refer to as the peanut butter quagmire. This is the classic case in which the United States tried to pass regulations governing the crucial social issue of what is pure peanut butter. The question was, is peanut butter 98 per cent peanuts, 99 per cent peanuts or 99.5 per cent peanuts? They had years of hearings. There were 17 volumes of evidence. It went over two years, and the mistake they made was to try the issue. They had a trial as to what is peanut butter. Of course, it became a quagmire. They just disappeared into it. It was a disaster.

I think that is clearly the model one has to avoid. One has to recognize that notice and comment is only an opportunity to make written submissions. It will be very seldom that you will allow for oral proceedings, and if the notice and comment procedures as used in the APA, the Administrative Procedure Act in the United States, are strictly confined to written submissions, they are doing work, as Professor Davis says, that is both simple and overwhelmingly successful.

As I am sure you are all aware, rule-making procedures in Canada are

relatively underdeveloped. Both the McRuer commission and the MacGuigan commission felt that there was no need for formal preregulation-making procedures, but the D. Carlton Williams Commission on Freedom of Information and Individual Privacy in this province declined to follow the advice given to that commission by my colleague at Queen's University, David Mullan, who had favoured a general notice and comment statute modelled on the APA.

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The courts, I suggest in my brief, have not provided the prod to administrators to adopt procedures in rule-making. If one is looking for reform in this area, it is going to come from two sources. One is the Legislature itself and the other is the administration.

I am going to argue that the federal experience suggests to us that, in fact, you can get considerable improvement with respect to preregulation procedures and notice and comment through the initiative taken by the administration rather than going the route of a general statute. Indeed, my thesis is that we should not box ourselves in, as I believe earlier committees and commissions have, by saying that there is a choice to be made here, that it is either a statute of general application requiring notice and comment or nothing.

I would argue that the federal experience suggests to us that we can adopt a middle ground, which I think could be supervised and encouraged by this committee, in which individual rule-making authorities begin to take seriously formal opportunities for full participation rather than expecting that we would get a full-scale move to a notice and comment statute, although we do have, of course, as the committee I am sure is aware, the experience in Quebec which has moved over to a general statute.

One of the noticeable things in surveying Ontario legislation, certainly when contrasted with the federal legislation, is that notice and comment procedures are not being built in on a regular basis. If you read the federal statutes these days, you will discover that provisions requiring a reasonable opportunity be afforded to interested persons to make representations with respect to draft regulations are now standard legislative boilerplate. Indeed, when I have gone through the statutes recently, it is extremely exceptional to find a statute in which that provision is not included. It has become simply a boilerplate provision.

In Ontario, that is not so. I did a survey of current legislation of this session and found only one piece, Bill 13, the Ontario Environmental Rights Act, which proposed in subsection 14(2) that draft regulations be published in the Ontario Gazette and 60 days be allowed for briefs and submissions to be submitted in relation thereto. I note in my submission that this is a private member's bill. There is not an emerging tradition in Ontario, and I would say that we should look to the federal example and begin to think in terms of enacting those types of notice and comment provisions in the legislation itself.

I point out at the bottom of page 4 and the top of page 5 of my brief that there has to be a political commitment to preregulation-making procedures. Although there is no general statute at the federal level, there is, of course, a general commitment under the various political statements that have been made with respect to participation in regulation-making.

I ask the question here whether there is a commitment in this province



to move towards a general act, although I try to balance that by saying that, even if here and now there is not that commitment to immediately move to an act of general application, one can, following the federal model, move to the upgrading of opportunities and full participation in regulation-making, which does not involve a general act. It can be done on an incremental basis. I emphasize that I would see this committee playing a clearing-house role of trying to continue to encourage upgrading of notice and comment procedures.

I address very briefly the question of disallowance. I believe the committee should be in a position to initiate disallowance proceedings. I gather that you have heard from the federal people on this. I do agree that there are difficulties in devising the precise mechanisms for disallowance, but I think myself that disallowance should come through your committee.

I think your committee counsel has analysed this question in his very useful paper, Commonwealth Developments in the Control of Delegated Legislation, which was included in the package that I received in advance of today, in which he seeks to strike the balance between the advantages and disadvantages of disallowance.

I would say that one should accept the notion of time limits and the notion of funnelling disallowance through this committee and recognize that disallowance is something of an exception to the scrutiny requirement; that is, when you bring a regulation here for scrutiny, you are deliberately avoiding a merits assessment. I appreciate that when you get to a disallowance, it becomes very difficult to say you are disallowing this because it is only on a nonsubstantive, nonmerits measure.

I think when it comes to disallowance, you have to recognize that in fact the Legislature is then reasserting itself, that is has not abdicated its responsibilities. In these very exceptional cases--and I believe they will be very exceptional--when a disallowance motion is sought, then you have to grasp the bullet that in fact this is a delegated power and the delegator can revoke the power on occasion.

Again, I would obviously be delighted to discuss disallowance with the committee.

I found that your agenda, when it dealt with the mandate of the standing committee, raised some very important issues. I would very strongly urge a change in the standing orders to allow for conformity to the charter to be a standard criterion for evaluation of regulations. I observe that it is terribly important that we try to bring our legislation, including the little laws, including regulations, into line with the charter.

Indeed, I am not fully aware of how much culling and combing there has been of existing regulations to see whether they are in conformity with the charter, and particularly the equality provisions of the charter. As you all know, we went through a major period of reassessing legislation in the light of section 7 of the charter. I am not sure what has been done about regulations in this province. Certainly that would be a major undertaking that should be done.

One would want to avoid the situation of saying, "Well, if anybody is going to rectify conflict between a regulation and the charter, let's leave it to the courts." I think that would be very wrong and an abdication of responsibility by the Legislature. The Legislature has to check on how its delegates have used the delegated power and in fact measure the use of that power against the charter requirements.

I would argue that you should add "unusual and unexpected" as a criterion to your mandate. I do not believe that raises problems of crossing over totally into the merits area. I suggest that there is a distinction, which I am sure can be maintained in practice, between evaluating the merits of a regulation and evaluating an explanation of why a regulation has been called to your attention under the heading of "unusual or unexpected." In other words, it seems to me that one can distinguish between merits and an explanation.

Ultimately, this committee would have to defer to the expertise of the regulation-making authority if the regulation authority came up with a good explanation, but if the explanation was unsatisfactory to the committee, then I think, using an "unusual or unexpected" power, you should be in a position to seek to have that regulation rescinded.

I am not terribly sure I understood item 11, and it may be that that is my problem. The reference there is to an examination of the regulatory process. If by that you mean the regulation-making process, then I think there is some concern there. If you mean the regulatory process to include procedures leading up to the enactment of regulations, drafting, consultation, filing, publication, etc., I certainly favour the committee continuing to keep an eye on those developments.

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If, however, by "regulatory process" is meant the process of socioeconomic regulation, important as I believe the oversight question is in regulation, I do not believe this standing committee is the place to do it. The standing committee should confine itself fairly strictly to the legislative activities rather than try to get into the whole area of regulation. I think there is a temptation to get into that area, but this committee should hold back from that.

I do not favour merits scrutiny on a limited basis. I think it is a very steep, slippery slope. It is nice to say, "We will look at the merits, but only on a limited basis." I am not sure you can do that. I raise questions of institutional competence of this committee to deal with the merits and I also suggest it is an invitation to conflict between this committee and responsible ministers and the cabinet itself.

I suggest at the top of page 8--again, this is something that has been tossed around a good deal at the federal level--that one might think in terms of having regulations referred to appropriate sectoral standing committees in order for them to have a look at the merits, because there the level of institutional competence is likely to be high. Even with that heightened competence, I do not think it is realistic to think in terms of a legislative committee, made up of members with obviously many other obligations, attempting to reassess the merits of the regulations on a regular basis. But if you are looking for some limited degree of merits regulation, I respectfully suggest this is not the committee, given this committee's mandate and continuing responsibilities.

Mr. Chairman: Before going any further, at this point in the middle of your discussion on the proper role of the committee, I want to get a clarification, in the light of other comments you made, on notice and comment. The ordinary sense of the function of notice and comment is it is to come at the beginning of the regulatory process within the government, as opposed to directly affecting this committee which has a scrutinizing function. I take it



from your last set of comments that you think this committee should continue as a body that scrutinizes what has already been done, and should do so in a vein that focuses on the process of government and the process of the government acting, but not the policy area the government would act on.

Having said that, it is not clear to me whether you are supportive or not of the aspect of the federal government's reform where it created a whole ministry that provided an internal control, for lack of a better description, that had a kind of internal scrutinizing but was not a parliamentary scrutiny. As I understand it, and this committee has heard some evidence, it was aimed at providing an internal system for the government that the people in the government would be comfortable with, as opposed to an external entity that would, as I think you have referred to, perhaps be in conflict with the function of government.

Given your thoughts on all these different topics, I wonder if you could expand a little and tell us whether you think it is a good idea to have a separate ministry, or some kind of internal structure, how that might be done, whether there are any drawbacks to doing that, and that sort of thing.

Mr. Callahan: It should be noted as well that the federal ministry is also the ministry of privatization, which clearly has a link with the review of statutory regulations because that is the direction they are moving in. They are trying to free up or make less difficult the deregulation, you can call it, I guess, to enhance the private sector's ability to negotiate. I am not so sure that ministry is necessarily set up simply to be a watchdog. I think it was set up in that twofold function.

Mr. Chairman: That may be. I am worrying about only one side of it for the purpose of this question, although, professor, you are entitled to expand on any aspect of this that you want to.

Mr. Janisch: I am not advocating the massive approach the federal government has adopted. Perhaps I should have been more specific about that. I believe the notice and comment opportunities that have been built into the federal system at the moment are useful. They fit within what my mentor, Professor Davis, called something which is "simple and overwhelmingly successful." I am not persuaded that the massive process of evaluation, the cost-benefit analysis of regulation-making and the whole bureaucracy that has been set up in the federal sphere is what this province needs at all.

In other words, I advocate selectivity and modesty in my approach; that is, one should select out what can be done effectively. I think notice and comment can be done effectively without necessarily setting up this whole, big structure. I think Mr. Callahan is quite right when he points out that this was associated very much with the government's concern for privatization and deregulation. I keep those separate in my mind, that one can have an effective notice and comment procedure without involving oneself in the massive external bureaucracy.

I believe it is useful, and indeed federal experience supports this, that where a regulation-making authority is considering a regulation that is a matter of good, administrative process, it consider the alternatives and ask itself what the cost-benefit analysis of making this regulation is. But I think that should be done very much by the regulation-making authority itself rather than setting up an external check, as has been done at the federal level, which I think becomes, if I might say so, a rather academic exercise

without really effectively hitting at the thing. I am not favouring that the whole baggage--

Mr. Callahan: It is all political.

Mr. Janisch: All political. I see the notice and comment procedure as something that is fair to people affected by regulations. I believe that a notice and comment procedure can favour regulation or not favour regulation, but that it is not designed to deregulate.

Mr. Chairman: Can you make any further suggestions about how the government ought to be better run, if that is the right word. What mechanism do you use to--

Mr. Callahan: Do not make that invitation, Mr. Chairman. We will have cards and letters coming in.

Mr. Chairman: What I am trying to get at is your view about how you proceed to selectively deal with these kinds of issues. The question of whether any regulation is necessary maybe does not come up within the context of notice and comment. How do you deal with that?

Mr. Janisch: Yes. It is always a tricky problem. I distinguish between regulations with an "s," which is what you deal with, that is, the little laws--not so little, actually, when you pick them up. It is the specific regulation, as opposed to the whole question of regulation without an "s." Regulation without an "s" is really a very much broader question of political philosophy and attitude towards the role of government and so on which, first, I am not terribly sure I am all that qualified to talk about, and second, I do not think is what I had in mind as being the responsibility of this committee. This committee was focusing on regulations and then the question of what mechanisms could be best adopted to ensure some limited degree of participation in the process of making those regulations, as opposed to the whole question of the reform of regulation.

Mr. Callahan: Could I ask a supplementary?

Mr. Chairman: I am disinclined, although I have been unfair in opening the issue up.

Mr. Callahan: You certainly are.

Mr. Chairman: I am disinclined to get too far off. I wanted to cover what I perceived to be something that was not covered clearly in his paper, as opposed to a great debate. I may be at fault for having opened the door. Seeing the waving of arms going on, I know we will never let him finish his other point. I do not think that is very fair to him. Perhaps, professor, you can proceed with your paper.

Mr. Janisch: Thank you, Mr. Chairman.

Mr. Callahan: You need a regulation to govern you, Mr. Chairman.

Mr. Philip: I trust I am high on the list.

Mr. Chairman: Yes, you are.



Mr. Janisch: Perhaps my approach can be seen in my response to the proposal that your committee's mandate should be expanded beyond the review of regulations to include enabling clauses in bills. I believe there are a number of continuing enabling-clause issues that need to be addressed on an ongoing basis and I refer to those briefly at page 8 of my submission. We do have problems with overly broad grants of law-making power, imprecise grants of law-making power, inappropriate delegations of issues of principle. That I can see as a real fighting ground: the line between delegation of detail and delegation of principle.

We have open-ended exemption clauses where we pass regulations and say, "Yes, but anybody who wants to be can be exempted from the regulations." We have the notorious King Henry VIII clauses where legislation is amended by regulations, which is completely contrary to principle; that is, the subordinate body is determining what the predominant body will do. Finally, we have what I refer to as the excessive reliance on basket clauses, where instead of listing the precise use of delegated powers, the Legislature rather gives up and says "and any other such regulations as are required to bring this act into effect." That basket clause is a problem.

I suggest that rather than dealing with the enabling-clause issue on, if you do not mind my saying so, a rather hit-and-miss basis within the Legislature itself, it should be made a responsibility of this committee so that you over a period of time you develop standards that are applied for legislative drafting with respect to the enabling clauses themselves.

There is also reference to policy directives. I am going to argue in just a moment for a significant extension in the definition of regulation, which I believe will capture our policy directives, but I think I should note at this stage that policy directives are de rigueur at the federal level and are coming here. For example, in Bill 88, the Truck Transportation Act, you see an example of a very important public policy directive power being given to the minister.

Starting on page 9, I address the issue of the definition of regulation. I believe this is an absolutely crucial question. My basic argument is that the present definition is too narrow. This is because I think we have to recognize that in the modern administrative state there are now two levels of subordinate law-making. There is very formal subordinate law-making, where a regulation-making authority issues a formal regulation that is subject to the scrutiny of this committee and is then filed with the registrar and published in the Ontario Gazette.

But I would argue that in the modern administrative state there is a second level of law-making; that is, policy guidelines, policy manuals and situations where a decision-maker has formulated a clear policy and yet that policy is not published in the Gazette. It is not available to people. It is there, but it is not made available.

This is what R. E. Megarry, in England over 40 years ago, called "administrative quasi legislation." Perhaps I could read that little extract, because to me it captures a real challenge for this committee in its consideration of the definition of regulation. Megarry said, and remember this is over 40 years ago:

"Not long ago, practitioners could live with reasonable comfort and

safety in a world bounded by acts of Parliament, statutory rules and orders and judicial decisions. One of the tendencies of recent years is for this world to become an expanding universe. Decisions of administrative tribunals are comparatively well known additions to the lawyers' burden. A more interesting and perhaps less well known accretion consists of what may be called administrative legislation."

Megarry goes on to refer to this as "law which is not a law." It is law in the sense that these policies are firm and established, but they are not formally published in the Ontario Gazette. They are not available for public scrutiny. I argue that a definition of regulation which is as self-contained as the present one does not capture an awful lot of these additional legislative acts simply because they are not designated as regulations or rules or bylaws.

I would argue that one would have to look at this through a broader approach, and that an amendment to the regulation definition which talks in terms of documents of a legislative nature is the key. The key word is "legislative," because if you continue to use the words "rule or regulation," if the rule or regulation does not have written at the top, "This is a rule," or, "This is a regulation," then of course it falls outside the definition.

What you have to do is be much more functional in your approach and say that when an administrative agency has a firm policy on a matter it considers binding on itself, it should in effect be prepared to submit that as a rule to be subject to this committee's jurisdiction and to be published in the Ontario Gazette.

I was very struck by the language a few years ago of your opposite number at the federal level, which talked about "the twilight world of unpublished statutory instruments." That is, there is whole world out there that the definition does not capture.

I would like to argue, as I do on page 11, that this is not a radical proposal. It sounds as if it is going to be a massive extension of the capture of regulation, but in fact in 1968 the McRuer commission, whose recommendations were widely adopted, urged a more expansive approach be adopted to regulation. I have abstracted here the section from the McRuer commission. The last two sentences of that extract are the crucial ones: "The expanded definition should include all rules made in the exercise of subdelegated power. It is an unjustified encroachment on the rights of the individual to be bound by an unpublished law."

I would like this committee to recommend a definition that is much more functional than the present one. The present one really is self-contained. A regulation is a regulation is a regulation is a regulation. It does not break out of that and say, "Now, what really are we concerned about?"

What we really are concerned about is a situation where a decision-making authority has made up its mind about how a matter should be dealt with and is, in effect, adopting a consistent policy in dealing with individual applications. I would urge that this is a law in all but name, that this really is a binding document and that what we need to do is have a broad enough definition so that the decision-maker is encouraged to bring that document to the Attorney General to have it designated as a regulation under the expanded definition, and then be subject to scrutiny and certainly be subject to publicity so that people can know what these rules are. Again, I



would be more than happy to enter into any further discussion the committee members have in that regard.

My final point in my brief is the question of access to regulations. I thought your agenda seemed to be more concerned with what I would call the cosmetics of regulations: How do they look? How they are drafted? Do they look nice? I am going to suggest to you that a crucial question is citizen access to regulations. I argue on page 12 that every time I struggle to do research in the Ontario regulations, I am reminded of a story about the infamous Emperor Caligula. It is said that he was inclined to write his laws in very small letters and hang them on high pillars, the more effectively to ensnare the people.

Mr. Callahan: That certainly caught all the short people.

Mr. Janisch: Or shortsighted.

I brought as an exhibit the unbound regulations for 1987. There are 752 of them. The Ontario Gazette publishes no cumulative index, so if you or I were doing a thorough statutory research, we would literally have to go through every single one of these regulations looking for a regulation that might be affecting us.

It is true that about this time of year, but obviously not yet because the reason I have these is that they are unbound, a cumulative index is published. One must remember that cumulative index is not an index of subject matters; that cumulative index only indicates how many regulations have been published under the statutes.

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If you want to do a research--and the example that my reference librarian at the law school was being harassed about the other day was the regulation of standards for the making of yoghurt. She did not know where to start. Where do you start? Is that under health legislation? Is that under agricultural legislation? Is that under the Milk Act? Where is it at?

You have to spend an initial search period finding which statute it is possible that your regulation was passed under. Once you have found the particular statute, you are then confronted with a so-called index, which simply lists all the regulations made under that statute. You then have the process of going through each one of those regulations looking for the particular regulation that affects you.

It is true that there is a commercial publication, Carswell's Regulation Service, which costs \$300 a year, as opposed to \$62 for the Ontario Gazette. It does publish a monthly index that is referred to as an analytic index, but it too is actually only a list of the statutes. It is slightly better than the Ontario Gazette index because it actually lists according to specific provisions of an act so that, when you do your research, at least you are not looking for all regulations made under the act. You can, in fact, look for particular regulations made under particular sections, presuming you know the particular section you are looking for. That, I suppose, is the catch.

The resources available to you to do research on regulations in Ontario are such that, if you know precisely what you are looking for, you can find it. But if you know precisely what you are looking for, you do not need an index. In other words, if you are approaching this subject without a high

degree of preknowledge, virtually without knowing precisely what you are looking for, there is literally no way that you can do research in the area.

I suggest that if you are looking for regulations governing a certain subject matter, you have to guess what the statute is that they are enacted under and then spend hours, if not days, laboriously going through literally thousands of pages looking for what you want. I conclude that the print size and location may not be the same, but the result is similar to the days of Caligula.

I would argue that, of course, some people do know all about the regulations and that one of the most invidious matters that the current system encourages is that those specialists with legislative services, largely to be found in the larger law firms, do have a very careful access to regulations for their major clients.

I would argue that the present system perpetuates and indeed adds to inequality because what it means is that, if you are a lawyer specializing in mining law, you use your law librarian or your library to keep a very careful collection of all the regulations made under mining law, but if you are a nonspecialist, there is no way you can do that. It perpetuates inequality.

Finally, and in some ways I think this is the worst thing, it leads to incredible duplication of effort. Rather than one body being responsible to produce a subject index to the regulations that would allow one to access the regulations, a whole series of people are all making their own little personal subject indexes. So if you took all the lawyers' time at a very large dollar figure per hour and multiplied it out, you would realize that people are creating their own means of accessing the regulations but that this is at incredible duplication of effort.

I would also argue that there are no short cuts. Any computerized system will only be as good as the information stored in it. If we simply transfer regulations into machine-readable form, we will have an electronic file of inaccessible information much as we have a paper file of inaccessible information today. Without an adequate subject index, a computer will give back what we already have.

By way of illustration, I undertook a search of the existing Ontario regulations database. My search was for regulations on mental health. I thought that was an appropriate subject, given my sense of frustration with this. The wholly inadequate result is attached as an appendix in the main brief I have submitted to the committee. You will note from that that titles beginning with A, and some with B and C, are current to June 25, 1987, while the rest are current to December 31, 1983. So much for the much-vaunted computer revolution in law.

In other words, if you just take all this and put it in a computer, it is garbage in, garbage out. You do not get anything more out of a computerized system than you put into it, and we have not yet put in the effort to have a decent, up-to-date subject index so we can access regulations in an effective way.

Finally, and this is part of a broader issue, I raise the question of whether it may not be time to divide the Ontario Gazette, as is done at the federal level, between part I, which is notices, part II, which is regulations, and part III, which is legislation that has passed third reading. I might say it is very frustrating, when doing legal research, to discover



precisely what has been passed at third reading. It is easy to get hold of the legislation as introduced; it is very difficult to be sure you have a precise version of it as finally passed. The Canada Gazette, part III, is an extraordinarily valuable research tool because you can get hold of the legislation as finally passed.

In closing, I wish to congratulate the committee on its evident willingness to reconsider some of the fundamental questions respecting the role of regulations and subordinate legislation in our complex administrative state. I wish you well in your deliberations and thank you for an opportunity to appear before you. Obviously, I am now open to any questions anybody might have.

Mr. Chairman: Thank you very much. I am going to go to Mr. Philip first and Mr. Callahan second.

Mr. Philip: I want to thank you for a very interesting paper. I was impressed with some of your comments on page 10 which, it strikes me, have an application not only to this committee but also perhaps to the standing committee on the Ombudsman. If both committees were to make a decision to concur with what you are stating, it might have an even stronger impact on the Legislature.

So often in the Ombudsman's committee we are faced with decisions in which the Ombudsman points out that the decision-maker had no policy or an inadequate policy or a fuzzy policy or an unknown policy on which to base the decision, and therefore the civil liberties or the rights of an individual had been violated. I certainly will be passing your paper on to the Ombudsman and to Cindy Nicholas, the chairman of our Ombudsman committee.

One of the concerns I did have with your paper stems from your comment that this committee should not involve itself in oversight. My problem with that comment is that the standing account on public accounts has got into oversight to some degree, particularly if you look at the mental health stuff we dealt with. A paper I will be presenting to the public accounts committee in July will deal with the need for public accounts committees to deal with that kind of thing.

My question to you is, if this committee does not deal with oversight of regulations, who is going to deal with it? We are getting more and more regulations, mountains and mountains of them. To the person who does not have a lot of money, does not have a lot of legal counsel, the mountains simply create the unfairness. Unless there is some legislative body reviewing and sunseting some of these regulations, you are creating a grave inequity in the system. Maybe you can answer that. If this committee does not do it, who should be doing it?

Mr. Janisch: I think my problem is the distinction between an oversight of the whole regulatory process as opposed to oversight of regulations, that is, of the subordinate legislation. I would have no doubt that this committee has a continuing oversight responsibility over regulations.

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My concern in reading the particular item--as I recall, it was item 11 in your agenda--was that you were talking about an oversight of the regulatory process, that is, the licensing proposals of the Ontario Highway Transport Board, the nature of the new Ontario Automobile Insurance Board and how it acts and so on. We have literally hundreds of regulatory agencies.

I think there should be some oversight of the activities of regulatory agencies, but if this committee undertook it, I am concerned that it would lose sight of what I believe to be a very important continuing role of oversight of regulations, of the actual law. I share your concern, but I do not think this is necessarily the right body, but rather some committee of regulatory reform that has a continuing overview, which to some extent already happens. When the regulatory agencies come before the Legislature with their annual reports and for their annual appropriations, there is some review then, but almost certainly not enough.

Mr. Philip: One of my concerns is that when I look at committees of this House, I see very little emphasis on oversight. When I go into the United States, and probably because of the present split between the administration and Congress, there is increasing evidence that some committees will spend 30 per cent to 60 per cent of their time finding out why a particular law or regulation was not applied. I am concerned that somebody be doing it.

Am I hearing you saying then that you see there is a role for this committee, at least in dealing with oversight of regulations but not oversight of legislation?

Mr. Janisch: Or oversight of particular regulatory activities. In other words, I draw a distinction between legislative output, which I think you should be concerned about, and the general licensing and regulation activity of the myriad regulatory agencies.

On your point of contrast between the role of committees here and in the United States, the American committee system is so much stronger because of its separation of powers. There is no doubt that our parliamentary tradition does not give parliamentary committees quite the same scope for independent assessment of what the executive is doing compared with the American system.

On the other hand--and the upgrading of the role of parliamentary committees at the federal level might support this, although there have been some quite mixed results--it is easy to upgrade the role of the committee. It is quite another thing to accept the committee recommendations when they run contrary to government policy. It is a difficult problem for us.

I just urge that this committee keep doing its job and keep its focus clearly on the little laws and not dissipate its energies and abilities by getting into the whole area of regulatory process.

Mr. Philip: One of the things, though, which is a pressure in addition to the separation of administration and legislation is that society is becoming so complex that unless you move towards more powers for committees, be it in Canada or in the United States, it is the bureaucracy then that will run everything. I am not sure that a Stalinist style of system is terribly workable. It has not worked in some of the large corporations in the United States, it certainly has not moved in the Soviet bloc countries and I do not think it will work here.

Mr. Janisch: If I could go back to an earlier point--and I guess this is just keeping my eye on this question of accessibility--it is true that the complexity of legislation appears overwhelming. If somebody confronts you with this and says, "Somewhere in here is the regulation you are looking for"--or even worse, "Somewhere in here is the section in the regulation that you are looking for"--the answer is that it is quite terrifying. It really does bring back Caligula and his tall pillars and his small print.



But the reality is that probably we need this amount of regulation. I do not think one could advocate saying: "Let's cut the regulations in half or a third. That would be more controllable." I think in the complex society we live in, we do need this amount of regulation. My plea would be that we devote enough resources to make that amount of detailed regulation available and accessible.

To me, it is not so much--the complexity perhaps is that people when confronted--my reference librarian, who very kindly gave me access to this unbound block of regulations, says that she is constantly pestered by people who come in off the street and ask, "Where is the regulation that governs me?" She has to go through what is a very embarrassing explanation, that is, "Somewhere in there is the regulation that governs you." People coming off the street say, "You're hiding the law from me." She says: "I am not hiding anything from you; it has been hidden from you. I can't do more than tell you to sit down and page through this mass of regulations to try to find your regulation."

So I do not think the problem is necessarily complexity; I think it is inaccessibility. I think if you had a decent subject index, as there now is of the Ontario statutes, as there now is of the federal statutes--a marvellous bilingual subject index has just been produced by the Canadian Law Information Council--if you had accessibility, the complexity would be controllable. Again, I put in my plea for a means of accessing regulations rather than simply saying, "Let's reduce the number of regulations," which I think is fairly unrealistic.

Mr. Philip: Forgive me, but as a new member of the committee--this is my first week on this committee--and as someone who is not a lawyer, I just want to make sure that I understand where you think this committee should be operating.

Let us say that a regulation that there be regular inspections of all the pet stores in Ontario is passed. Do you see it as the role of this committee to inquire whether there has been an adequate number of inspectors hired and whether there is a budget for the inspectors to fulfil that regulation?

Mr. Janisch: No, sir, I would not.

Mr. Philip: Would you see that as the role of another committee?

Mr. Janisch: Exactly. Again, I would say somebody should be looking at that but I do not believe it should be this committee. That would be an ideal question to put to the minister and ask: "What resources have you put behind this? You passed a regulation for inspection, but do you have the inspectors?" That could come up elsewhere.

I would like to see the focus of this committee remain on the existing criteria as set out in your standing orders, which really are relatively technical but terribly important: Do these regulations conform to the important form that we have laid down? Are they compatible with the Charter of Rights? Are they making an unusual, unexpected use of a power? Do they impose a taxing power where no taxing power was granted? Do they come within the breadth of the legislation-making power granted to the rule-maker?

I think those are very important questions, which should be the focus of this committee. Broader questions like allocating of resources to inspectors

under a regulation would simply overwhelm this committee if it tried to deal with all of them.

Mr. Philip: I think you make a good point on the whole need for indexing and computerization, but again, quoting your own words, or a facsimile thereof, I suppose if you put in junk, then you are going to get out junk.

Mr. Janisch: Yes.

Mr. Philip: One of my concerns is that there are an awful lot of regulations out there, not to mention statutes, that are simply inoperative. Why clog up the system unless there is a system of going through first, maybe up to a decade ago, so that we are not stepping on any current cabinet minister's feet and not getting into something that might involve this committee in partisanship?

Do you see a role for this committee, perhaps on a regular basis, in moving towards making recommendations regarding sunseting of regulations? Regulations that were passed in 1900 have absolutely no relevance to this decade or these times and, in fact, the bureaucracy or the police are probably ignoring them.

Mr. Janisch: I believe that is an important task. It would seem to me that an ideal opportunity to do this would be to look to 1990 and the next revised regulations. As you know, on a 10-year, decennial basis, regulations are revised. The danger of the old style of revising regulations was simply to take all of them, repackage them and put them in nine or 10 nicely bound volumes, which is nice, so that you could actually have all of them in one place. As of 1990, you will have all the regulations.

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I do agree with you that there could be an awful lot of culling of regulations. An appropriate role perhaps for this or some other committee, when an approach is made to the revised regulations, might be to say, "Let's take that word 'revised' seriously." In the past, it really has not been revised regulation; it has been cumulative regulation, which has taken all the regulations and put them in a big volume. The draftspeople have been given responsibility only to correct technical errors that appear in the revised regulations.

I think that would be a very suitable occasion to take this whole massive volume and in effect go through it looking for what, on the basis of commonsense judgement, look like redundant regulations, and then perhaps have what amounts to a sunset provision and say to the department or the regulation-maker, "We can't understand why you still want this regulation of steamrollers; there aren't very many steamrollers cluttering up our streets," or, "Could you justify a regulation governing steam engines, traction engines or the boiler pressure in steam-operated calliopes?" I am sure I can find all these in regulations if I look hard enough. Then you can say, "OK, come back with those."

Yes, I believe that could be a very important role. It may be that a subcommittee within this committee could have that responsibility of culling, of trying to take out, to reduce. I do agree with you that you do not want simply to say, "Here are some wonderful new techniques for accessing this huge mass of regulations," because you could ask, "Why be able to access something



on steamrollers or steam calliopes?" You might want to say, "Come on, let's cut that out and let's start again." That might be an interesting idea.

Mr. Philip: One last question then: Perhaps it is my Scottish background or perhaps it is because I am chairman of the standing committee on public accounts, but I am always looking at ways of saving money. I am wondering, if the committee were to do that, is it likely that there would be law interns and people like that who might, as part of their projects or study, involve themselves in working with a committee like this? We have interns for various other things.

It strikes me as an overwhelming job, particularly if 1990 is your goal. A lot of it is light work. It is not terribly difficult work, but it does require bodies who have a knowledge of laws and regulations and who can get in there and do some work. Is it something the University of Toronto or other law faculties might be interested in involving themselves with if that were a project of the Legislature?

Mr. Janisch: I would imagine very much so. Certainly in a concentrated summer period, I think it would be possible to hire 10 or 15 law students to go through the regulations like the flail of the Lord. They will not be in a position to make judgements as to what should or should not survive their culling, but they certainly will be in a position to bring steam calliopes to your attention. In other words, I think they could serve that role very effectively. Yes, I think that would be just the sort of thing.

At the same time, it would seem to me that if it has not been done already, one of the useful processes of aiming for the 1990 revised regulations would be to check against the Charter of Rights, because I suspect that if you go through these regulations with a care to the Charter of Rights, you are going to find an awful lot of conflict between the regulations and the Charter of Rights. It might be that a process of selective culling and checking against the Charter of Rights could be accomplished at the same time, leading up to the 1990 revision.

Mr. Callahan: Professor, your paper is very good, but I have three issues I want to discuss with you. The first one is that I am sure through reviewing the regulations and the statutes, as you said you did, you can attest to the fact that in the so-called last paragraph of most statutes it says, "The Lieutenant Governor may make regulations as to A, B, C through...."

Mr. Janisch: Yes.

Mr. Callahan: It originally started off as being really just forms or being used in the case of a statute where something had to be done very quickly and you could not go through the usual process, but today it has become a catch-all and sometimes just a major basket clause that says "and such other powers as shall be required."

Mr. Janisch: Yes.

Mr. Callahan: Two things were drawn to our attention. In the light of your agreement with me on that point--this sort of deals with your statement at page 9 about a law which is not a law, that the minister, under clause 6(a) of the Regulations Act, can "determine whether a regulation, rule...or bylaw is a regulation within the meaning of this act and his decision is final."

Mr. Janisch: Yes.

Mr. Callahan: It was suggested, and I am inclined to agree, that clause 6(a) pretty well annihilates the entire Regulations Act, because as you say, policy could be enacted through that.

Recognizing that fact, if it is a fact, the other statement that was made to us which gave me cause for concern, and I do not mean to demean our civil service, but it was suggested that civil servants may very well have in their bottom drawer a whole host of ideas that they want to put in place, and that through either that section or whatever basket clause may be in a statute, they will slide in that pet policy through the use of a regulation. I suppose ministers are far too busy to examine everything that comes through in that way, and then accordingly, you get 770 regulations with a tremendous capacity for ruling that actually was not anticipated. Do you agree with that?

Mr. Janisch: I agree to the extent that you have a real problem in what I call the basket clause of the tail wagging the dog. The basket clause was put in there because you could not list everything and you wanted to have some reserve. This is again a matter of detail that I think is important. This committee should insist on some degree of precision to the specific legislative authority for a regulation.

I notice now that all too often there is no reference to a specific power. There is simply a provision to the basket clause, to the tail. I think this is a problem because then it means judicial review is ineffective; that is, you cannot check to see whether in fact this power was granted in the first place as a matter of law. Your job, I think, is made very difficult. How can you check a regulation against your standing order criteria when in fact, it is claimed to be passed just under the general provision saying that you might pass any regulations you want to bring this into effect?

As regards your other point with respect to the minister's discretion to determine what was or was not a regulation, that in itself of course is an extraordinary, open-ended power. It means that the Attorney General can really designate anything he wishes as a regulation.

My problem with that, and I address it briefly in my paper, is that when you start from a definition that is essentially, "A regulation is a regulation is a regulation," and when that is the attitude that is conveyed to decision-makers, to the administration and to the civil service, they will bring to the minister only matters that look like regulations; in other words, things that are really in regulation form.

My great concern is that there are an awful lot of what I call bottom drawer regulations; that is, in the bottom drawer there is a firm policy. Here you are arguing a matter of discretion and there is in fact a fixed policy that is in the bottom drawer. That does not get out of the bottom drawer and the definition does not encourage persons of goodwill. I think one has to work on the assumption that there is goodwill in the administration, in the civil service, to get it out of the bottom drawer and to submit it as a regulation so that it can be published and made available.

The minister's discretion at the moment is exercised in the context of a narrow, rather technical definition of what is a regulation. I would like to see that opened up so that an awful lot of, frankly, what is secret law, an awful lot of policies, guidelines and manuals are brought out into the open.



We had a classic example of this, and I am sure many members will recall it, in the Workers' Compensation Board when it was discovered that the Workers' Compensation Board was saying it was operating under its statute and its regulations, whereas in reality there was literally a huge pile of manuals that were dispositive of how claims to workers' compensation were dealt with and these were all literally in the bottom drawer.

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You went and argued a workers' compensation claim and the adjudicator sat and nodded and said, "That's a nice argument," and then when you walked out of the room he went to the bottom drawer, pulled out the manual, looked up section whatever it was and said, "There's the decision I am bound by." They never conveyed that information to you. You did not have access to the manual. That was quite a scandalous situation. I am sure you are familiar with the scandals that were associated with the administration of workers' compensation, brought about in large measure because of the secret law that was being used by the Workers' Compensation Board.

I think the Workers' Compensation Board in that period was a particularly bad example of this and I would like to think that a lot of other boards and tribunals and agencies have cleaned up their act. Certainly, for example, the Ontario Securities Commission is very good about publishing guidelines and policies and so on. I sometimes worry whether those guidelines and policies can be reconciled with the Securities Act itself, but at least they publish them and make them publicly available.

I think a broader approach is what is called for and I think you are quite right to point out that clause 6(a) at the moment really gives the minister the power to close us all down. That is what I am trying to suggest.

Mr. Callahan: Perhaps an even more horrendous application of that was the intervention--I do not remember what ministry it was--into the Barrie annexation case, where a regulation was passed under the Planning Act to allow policy to jump in and really change the whole ball game.

Mr. Janisch: Yes, exactly; that is right.

Mr. Callahan: I do not want to take up too much time. The second point is that when I was chairing this committee with the counsel who is presently counsel, we discussed the question of whether the Charter of Rights should be looked at. It was not part of the standing order and I was very much in favour of it at that time. Just to play devil's advocate, we have a statement from the Quebec experience. They talk about when you start looking at it from the standpoint of the Charter of Rights, you may very well be entering into what I would call the executive policy-making level.

The reason I say this is that the experience we have had with the charter is so limited--we also have section 1 of the charter, which is an override, and even section 33, which is a further override--that if we were to examine the regulations on the basis of the charter without limiting it simply to the most obvious breach, we would be doing what you have admonished us not to do, dealing with the merits. The Quebec paper seems to indicate that should be left to the courts to determine.

The other concern I have is that if we did not do that, we might in fact be placing the executive or the policy-makers in the position of not being able to move one step forward or one step back, because every time they made a

regulation--assuming we had an effective power of disallowance--some very important policies might never be implemented properly because of this approach.

When you say we should examine it from the standpoint of the Charter of Rights, are you saying we should do it in the most obvious case or in all cases and sort of second-guess the courts? It is tough to second-guess what the courts will do today anyway. Perhaps you could comment on that item.

Mr. Janisch: I certainly appreciate the thrust of what you are saying. I think it would be a mistake to try to go through and look at the regulations at too detailed a level. I think your reference to the most obvious breaches of the charter is the right approach.

I would say that I would be a little bit careful of using Quebec evidence on the charter. The experience of the application of the Charter of Rights in Quebec is equivocal, to say the least. I think perhaps their assumption that it will lead to a conflict with executive policy-making is a little bit self-serving. Quebec would like to see problems with applying the charter.

For example, as you know, they apply quite rigorously their own human rights legislation and use it as a scrutiny device for legislation. What they do not like is the federal charter, so I think we would want to teach that with a little bit of care.

Finally, the reference to the section 1 legislative override: I think it is very important to remember that is clearly legislation, not subordinate legislation. You cannot override a charter right as easily by way of straight legislation. It has to be something more than simply a regulation whose conflict equals an override; it is a much more conscious decision than that.

I would say yes, I must agree with you that it could be just a horror story if you went through it line by line with too much imagination, seeing all the possible charter conflicts. I think we are all suffering from charter aftershock as it gets implemented. But I believe one would not have much difficulty in finding some fairly obvious examples and using that as a screen, so it has to be a fairly wide-mesh screen. If you get into too narrow a screen, if you say: "This is a possible, arguable charter question. Let's leave it to somebody else to decide"--

Mr. Callahan: Doubt should be left.

Mr. Janisch: That is right.

Mr. Callahan: Finally, a comment on your question of trying to locate which section of the act. The federal people who have been here have told us that they actually refer to the section and subsection that was in effect. I think that addresses your concern about--

Mr. Janisch: Yes. One of those things Senator Forsey and Mr. Nowlan were extremely strong on in the early days of the committee in Ottawa was the insistence that there be precise statutory authority. I might say that this makes an awful lot of difference if you are looking to potential judicial review; that is, if you tucked it under the basket clause, it is very difficult to say this is inconsistent with the purposes of the act, whereas if



you put it under a specific provision, I think that makes judicial review more meaningful and makes it into genuinely subordinate legislation.

Mr. Callahan: Would you agree with the comment that was made, that if by some error you put the wrong section or subsection in there, this would not necessarily invalidate the regulation as long as, in a review of the entire statute, you could find the power within that?

Mr. Janisch: That is right. You are not estopped from asserting another source for it, but you have to be able to point to some source.

Mr. Callahan: Finally, we were told that the power of disallowance in the federal Parliament is by way of a recommendation in a report which is submitted to the House, and that if within 15 days no comment is made, the regulation ceases to have force and effect, but if there is a vote in the House and it goes against the report, then the report has no effect in terms of changing the law.

The reason I ask that question is that it has come up, and I know my colleague disagrees with me, with reference to the other reports such as the Ombudsman's report. Do you agree that it does not change the law, that it requires further action on the part of the minister to withdraw the regulation? They cited a case to us in the federal situation under the agricultural regulation where it was totally ultra vires. The minister refused to withdraw the regulation and accordingly, what happened was that the House had to support a regulation that was totally ultra vires.

Mr. Janisch: That is potentially a very difficult problem because a resolution of the House is not a statute and therefore does not override the regulation. The regulation still stays in existence. Then you have this awkward situation where you have an impugned regulation and a resolution of disallowance, yet the regulation has not been actually struck down. I assume it would be, politically, an extremely embarrassing thing for the minister to say, "The House has voted to disallow the regulation, but I am dashed if I am going to put an order in the Canada Gazette withdrawing the regulation." It could arise, but one would hope it would not.

I would agree that then you would have to take it to the next stage, which it seems to me would be an amendment to the Regulations Act itself, to say that in the event of a disallowance, regulations are struck down, but you would have to put that in the Regulations Act as well. You could not do it just by standing order and resolution.

Mr. Callahan: Without that, really what has happened is that it is a political suasion.

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Mr. Janisch: Without that, there is the potential for it, and then this committee and anybody thinking of reforms here would have to balance against an improvement which can be done relatively quickly under the standing orders as opposed to revision of the Regulations Act itself. I, for example, am arguing, as you know, for a broader definition of regulation. Therefore I would advocate a new Regulations Act which would, in effect, provide for a disallowance which would be effective.

Mr. Mahoney: Very briefly, there are a number of laws, regulations and bylaws that are on various books around this province, and have been for

years, that are no longer pertinent, examples of the keeping of horses and mules in beautiful downtown Etobicoke, wherever that is--

Mr. Philip: They have a number of mules in downtown Etobicoke.

Mr. Mahoney: Some of them have even come to downtown Toronto.

Mr. Philip: They are at a location known as the civic centre.

Mr. Mahoney: There was your reference, as well, to steam engines and rollers and things like this. I just wonder if we are not, by your suggestion, creating a potential for simply creating a new industry for lawyers--

Mr. Callahan: Come on.

Mr. Mahoney: Sorry, Bob, but you guys have enough to do--to root through nebulous, unimportant old documents that will never see the light of day anyway.

Mr. Mahoney: Your point about the Workers' Compensation Board is valid. If someone is indeed keeping the rules in a bottom drawer, hearing your deputation and then whipping the rules out when you are gone, I quite agree that kind of information should be made public. But again, it is almost like creating a new cottage industry. You can just see these people all delving into these mounds and mounds of paper, and for what end? To deal with rules and regulations that are not practical, are not enforceable any more, as I said, really is not pertinent.

Would we not be better off to move in the direction of making regulations that are pertinent, part of a law, as opposed to a law that is not a law, as you refer to it, and simply making the more critical information of dealing with life in the 1980s, 1990s and onward more relevant?

Mr. Janisch: I appreciate the thrust of the criticism that what one is doing is creating a new industry for lawyers or a cottage industry. I would argue that the complexity of our present regime of regulations is such that it does deserve resources to be devoted to it. These resources are likely to be lawyers, and that is something I think we have to accept.

Many years ago, Mr. Justice Frankfurter in the United States said that he who lives by the procedural sword shall die by the procedural sword; that is, once we have gone on and committed ourselves to this highly complex, regulated administrative state that we live in, we must be prepared to devote the resources to make that regulated, administrative state work efficiently and fairly. That is going to require more resources to be devoted to little laws. They are the cutting edge; they are the laws that really have an impact on people. Although I am a little bit concerned about any indication of my self-serving interest in the future employment opportunities for my students, I do feel that we just have to address it and we have to put in the resources.

I am always shocked by the limited resources we have applied to regulations but I also agree with you that we should cull them. I am not saying that we should necessarily take all this or indeed go back to the Revised Regulations of Ontario of 1980 and say that what we have to do is to take all the regulations that have been passed between 1980 and 1990 and add them to the existing regulations of 1980. Then we would have a 1990 revised regulations that is twice as large as the 1980 regulations. Indeed, it would be even greater than that, because the rate of regulatory growth is going up exponentially and is not just flat.



I think we should be culling out these ridiculous regulations that do not make any sense in the 1980s. For better or for worse, I think it requires somebody with some legal training to go through them and use the scalpel. That is how it is going to have to be if we are going to take this at all seriously.

Mr. Mahoney: Whether or not the individual has legal training really was not my point quite as much as the fact of my fear of creating either an industry or a huge bureaucracy, you could call it, to deal with matters that really are not very important in the long run.

The issue of clear regulations and accessibility to the public is vitally important. I totally concur with that and I think you have outlined that very clearly. Your earlier example of the discussion on peanut butter is a good example because--

Mr. Callahan: It is crunchy.

Mr. Mahoney: Well, it gets stuck to the roof of your mouth, Bob. That is the whole problem with peanut butter.

I would hate to see us waste a whole lot of time on peanut butter, steam engines and Ed's horses and mules but I do appreciate your point and hope that if we were to move in that direction, whether it be through the auspices of this committee or through a new little temporary bureaucracy of legal and clerical people, that would be as carefully culled and watched as the actual job.

Mr. Janisch: I must say, years ago when I was talking about the peanut butter quagmire with my daughter, who was quite young at the time, she launched into a valiant counterattack and said, "If you were ever going to devote resources to a question, surely it is the question of what is the purity of peanut butter." I think one has to keep in mind that, although I do use that as an example of a quagmire when you go into it, it may be that it is a crucial North American cultural question that needs to be dealt with quite--

Mr. Mahoney: I hope not.

Mr. Sola: I have a supplementary to Mr. Mahoney's question. Would your proposal for indexing not help to unearth a lot of these items or regulations that should be culled? If we are going to follow your proposal and do some proper indexing, during that study of how to index these items I think you would come upon the ones that should be thrown out anyway.

Mr. Janisch: Yes.

Mr. Sola: I think the initial step, if we take up your proposal to index, would help us to get out of this quagmire of excess regulation.

Mr. Janisch: That is a very good point. The experience has been up to this point that CLIC, the Canadian Law Information Council--whose annual report I could leave for members of the committee if they are interested in seeing it--which has been involved in indexing of statutes, has felt that has not been its mandate. You do not go through statutes casually and knock things out, although revision is needed in statutes.

But in regulations I agree. I think very often regulations are passed to meet a very temporary, immediate problem. Yet, once passed, once in the Ontario Gazette, once bound in a volume in the library, they stay there for

ever and ever. I do agree that would be a very good opportunity. A combined approach of subject indexing and culling, I think, could be a very useful one.

Mr. Philip: Is that not a chicken-or-egg situation, though? Do you cull first so that you have less garbage to put in or do you index so that you identify where all the garbage is? I am not sure. Maybe they have to be done at the same time.

Mr. Janisch: What Mr. Sola was saying struck me, and I am just thinking this through right now. Perhaps a combined approach would be a useful one, although I should emphasize that the skills that are necessary for a good indexer are different from the skills that may be necessary for a culler. When one is combining, the danger might be demanding inconsistent approaches.

I do agree that it would be ridiculous if we ended up devoting considerable resources--because it is going to be quite an expensive undertaking--to subject-index garbage. There is no point in doing that. What we need to do is to pare it down, to cull it, to get to the regulations that we really want to retain and then make sure that people can access those through a subject index. It is a combined approach that I think is called for.

Mr. Sola: What I am getting at is that you have to index anyway if you are going in that direction, and when you identify these things, if you get back to horse-and-buggy days, how many of those regulations should still be in effect?

Once you have your index headings, somebody else goes through there--it does not have to be the same people who are doing the indexing--and just checks the same things, first of all to see whether they have been identified correctly under the correct heading and, while they are doing that, to see whether they are still valid. In that way, we could probably cull quite--

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Mr. Philip: What I hear you saying I do not think I am in agreement with and I do not think you are either, that is, that you index everything and then cull. I do not think that is what is being said. I think what is being said is that you either do them together or you cull first because it is very expensive to index a whole lot of junk.

Mr. Sola: I do not know what you are getting at. When you are indexing, I do not say print the thing and then cull. You have to go through these things and say, "This goes on this pile and this goes on this pile." Then you go through the piles and say--

Mr. Callahan: Like your bills.

Mr. Sola: Yes, seriously.

Mr. Mahoney: You cannot even cull them.

Mr. Callahan: Why not?

Mr. Sola: I do not think you go through and index, print and publish the thing and then say, "We forgot to cull it." It is the same thing as cleaning up the junk on my desk. I look at it and some stuff I save for later culling, other stuff I throw in the garbage right away. The stuff that I save I index.



Mr. Janisch: The point that I would emphasize is that this is a significantly different undertaking from the decennial revision because the decennial revision, apart from technical errors, has simply accumulated everything. This would be a major undertaking, but I am sure it is needed because to simply give access to the cumulative collection of regulations, I think, would be quite wrong.

Mr. Callahan: If you want to see the perfect reason we should cull, the next time you are in a hotel in Ontario take a look at the door. I will tell you why. The Innkeepers Act is nailed to the door and it talks about your horse and \$50. Every time I see that I become outraged because I did not bring a horse and, if I lose my car, they are not going to be responsible.

Mr. Janisch: I was in Japan this last summer. Of course, one has this vision of the Japanese being so up to date, and I was delighted to find on the back of my door the legislation governing admission to first-class hotel establishments which was kindly translated and which included a strict requirement that I check my sword at the desk on entering the hotel.

Mr. Chairman: Did you?

Mr. Philip: The horse business is actually out of the morality act rather than out of the--

Mr. Mahoney: Eddie, careful.

Mr. Chairman: I am not sure which way this discussion is going to turn next.

Mr. Callahan: As the judge said to the jury, strike that from the record.

Mr. Philip: I am sorry Mr. Callahan said that.

Mr. Dekany: I have a few short questions. I am mindful of the time that our next witness is here for us. First of all, just following up on the question of the indexing, do you have any rough idea of the costs of such a task? I appreciate it is a difficult task to do. My second question on that is, do you have any rough idea of the cost of culling?

Mr. Janisch: I am afraid my answer to both is no because I am not rash. I think I could come up with a figure but I would be unwise to do that. I am going to suggest that, if there is interest in this notion of subject indexing, the committee contact the executive director of the Canadian Law Information Council. CLIC has undertaken subject indexes of the Newfoundland, British Columbia and Ontario statutes and has just completed a bilingual subject index of the federal statutes, so it has terrific experience in this area. I think that would be the best way to go. It may well be of interest to call the indexing people from CLIC to appear before this committee. I will leave a copy of their last annual report, which has all the information on what they have been up to, with you.

Mr. Chairman: We may be interested in the topic. I will make sure that we at least place calls and find out the availability of possible witnesses.

Mr. Dekany: My second question is a very technical one. At the federal level there is a requirement in cabinet directives on when you make a

regulation that the authority be cited in the regulation. That is very detailed, because it says that in the section or the subsection, if there is reference to prescribing anything that may be prescribed in the act, then you must set out the substantive provisions of the act. It is very detailed.

We put that to an earlier witness, the registrar of regulations, who appeared before us and there was a potential problem raised that, if the wrong authority is cited, that may invalidate the regulation. We have heard from other witnesses who have expressed the view that a misrecital of the authority does not invalidate the regulation.

The question is then, in your opinion, would there be a danger in forcing the drafters to cite the authority? If there is, would it still be outweighed by the benefit of the public information that would be given?

Mr. Janisch: I believe the benefits would outweigh the risks because I do not see the risks as being that great. My understanding of the law on delegation is that the regulation would not be assessed as to its validity on its self-stated grounds of legislative authority but that a court, on a judicial review application or on appeal, would look at it and ask, "Is this authorized by the statute?" rather than, "Is this authorized by what the regulation says is a particular authority it has been enacted under?" In other words, I would say that may be a little bit of a fear.

I guess I would want to come back to those who raised that and ask if they have actual instances where the courts have struck down regulations on the grounds of a miscitation of legislative authority. I think that, in the balance, it is much better to insist on the legislative authority being identified and that whatever risk there is is outweighed by the benefit of that requirement.

Mr. Dekany: I would like to ask another specific question on the Regulations Act. We discussed it earlier with you. It is clause 6(a) which gives the minister, the Attorney General, the authority to "determine whether a regulation, rule, order or bylaw is a regulation within the meaning of this act and his decision is final."

I have heard, and I have no confirmation of that, that in fact that provision was put in at a time when the function of the registrar was separate from legislative counsel, that we had a very stubborn registrar who was refusing to accept certain regulations and that this was put in to override any arbitrariness on the part of the registrar. Whether that is the case or not, I do not know.

Assuming that the Regulations Act were amended to provide for a broader definition along the lines of what a regulation is, do you see any need for clause 6(a) or could this committee, without causing any problems, recommend its abolition?

Mr. Janisch: I would not like to see its abolition, although I would like to see its abolition in its present form because the present form reinforces the "regulation is a regulation" approach, that is, when it literally says that the minister may decide what regulations are regulations.

What I would like to see is the minister be concerned to ensure that law in fact, regulations that are functionally regulations, be included. I think there has to be an element of discretion there. I do not think it is mechanical. I do not think you can say that you always know what needs to be



published. I would like to see the minister have a responsibility to make his decision, in the context of an expanded notion, a functional approach to the question, but still leaving that discretion because there has to be discretion exercised, not in this narrow context but in the broader context.

Mr. Dekany: As you are aware, in the Regulations Act, there are a number of exceptions in the definition of "regulation" and, as you are aware, there are also numerous exceptions in various specific statutes.

Do you see any point in trying to consolidate all the sections from the various statutes in the Regulations Act itself? Obviously, there are difficulties in doing that because every time you have a new act under some other ministry, then you have to have both legislation made by that minister and also the corresponding legislation made by the Attorney General to amend the Regulations Act. The question is, does it matter where the exception is? It is a statutory exception.

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Mr. Janisch: I would say that it does matter, and it would be desirable to consolidate those matters into a single Regulations Act. I think it simply adds confusion when you have a higgledy-piggledy collection of exceptions in other acts, and I am not sure that it is really necessary.

When I look at the legislation, which includes a provision that this bylaw is not a regulation, I often wonder why it was passed, because on the face of it, it is not a bylaw that is caught in the Regulations Act in the first place. It seems quite often unnecessary to have that provision, so I would like to see it dealt with through the Regulations Act itself.

Mr. Dekany: Even if the definition of "regulation" were expanded, as you have proposed, which may result in a great many more such exceptions?

Mr. Janisch: Remember what my expanded definition is. My expanded definition says that a decision-maker has made up his mind to apply a uniform policy with respect to his decisions. It is legislative; that is, it is now going to be consistently applied. I would not like to see an exception that says where a regulator has made a consistent policy, that consistent policy may be hidden from the people who are affected by that policy. In a sense, I plead that my definition is a functional one, which is very difficult to argue against. I have difficulty arguing in favour of secret law.

Mr. Dekany: You are saying there should not be exceptions, even if you expand the definition of "regulation."

Mr. Janisch: That is what I would say, but I would still say that discretion is needed to know how far you are going to expand it.

Mr. Kaye: I just have one question regarding the Interpretation Act and the general regulation-making power in section 22. In view of your comments on basket clauses, do you think that section 22 should be repealed?

A few years ago, this committee decided that the section should be repealed. Then it reconsidered the matter and felt it should be transferred somewhere else in the statutes, perhaps the Regulations Act, feeling it was appropriate in the event of legislation that inadvertently omitted a particular regulation-making power.

Mr. Janisch: I would argue that the committee got it right the first

time. I do not think you should preserve that power. I believe it is a very important principle that when the Legislature grants lawmaking power, it be aware of what it is doing and it should do so specifically in the act. Again, I think it is an example where a possible, potential problem is used to override a principle, and I would like to argue for the principle to be upheld.

Mr. Chairman: Professor Janisch, you have been a tour de force of information and expertise. I want to thank you for your patience in answering all the questions and listening to some of the comments. Thank you very much, on behalf of myself and all the members of the committee, for an excellent presentation.

Mr. Janisch: Thank you very much. Could I again say how delighted I am to see the work you are undertaking and how important I believe the work is. If, over the next little while, I can be of any assistance through your counsel by way of urgings or recommendations or pieces of paper of one form or another, I would more than happily provide them.

Mr. Chairman: Thank you. It is a generous offer, which I suspect we will take up from time to time.

I would like to call for our next witness, Professor William Bogart from the University of Windsor, who has been waiting extremely patiently as we have run well over our targeted time.

Mr. Philip: It is listed as the University of Toronto.

Mr. Chairman: I know, but it is in fact the University of Windsor, and he is giving out a brief introduction, as well, which indicates the proper university. As you are getting settled, Professor Bogart, for the information of the committee members, I have two items to draw to their attention.

Yesterday, we gave out an excerpt from a cabinet submission guideline. It starts at the top of page 41, and I bring this to your attention. If you turn to the third page of that brief exhibit, there is a procedure flow chart for regulations. This is something that has come up previously in our discussions, and it gives some sense of the way in which regulations proceed. It looks like that.

I draw that to your attention just so you know it is there and why we distributed that. That is probably something the members will want to ask questions on of the witnesses who will be here a week from today.

In addition, I have requested that you be given a few pages which represent the two cover pages plus the list of recommendations from a report of the special committee on regulatory reform which is dated December 1980. It is a federal document which I will loosely describe as the Peterson report, because James S. Peterson, MP, chaired that committee.

Mr. Lupusella: Is he any relation to the Premier?

Mr. Chairman: Yes, that is the Premier's brother.

I thought that would be of some assistance to get a sense of what that government at that time, or at least the committee at that time, contemplated in terms of reforming the system of regulations.

We do have available the full report. It runs just about 50 pages. I am



not sure every member will want it, so we have not photostated that. If any individual wants it, certainly we will provide it. That having been said, I invite Professor Bogart to address us and go through his outline. After that, as you have seen, we are liable to ask some questions.

W. A. BOGART

Mr. Bogart: And I welcome them. Thank you very much, gentlemen, for asking me to appear before you today. It is a privilege and I hope my time here will be useful to you.

As the chair has pointed out, I have prepared an outline of my talk. I have not reduced my comments to typed form, but that could be done easily if that would be thought useful to the committee. To be perfectly frank, my secretary was ill this week and there just was not time to do it, but that could be done and could be got to you if you thought it would be helpful.

Mr. Chairman: If everything you are putting in here is on Hansard, we will have the benefit of being able to read your comments.

Mr. Bogart: Then I think that will take care of the matter.

The outline provided to me by Ms. Manikel contains many points, and I will not try to comment on all of them. Instead, what I am going to do is address the main ways to control and review subordinate legislation and how they might be utilized; then I want to make some specific comments on review for charter infringement, something that I believe is essential, for reasons I will develop.

These remarks should take about 20 minutes; that should leave lots of time for discussion about the points I have raised or any other matters with which I can assist the committee.

Let me first say something about what I see to be the purpose of subordinate legislation. In looking at ways to review and control subordinate legislation, it is important not to lose sight of the necessity and desirability of that instrument of governing. They are easy to catalogue and include such things as: the sheer magnitude of the business of government means that not everything can be dealt with in the parent legislation; the technological nature of much of governmental activity requires that only broad principles will be contained in legislation with specifics provided by regulations; and innovation and experimentation in solving social problems may become unwieldy if legislative amendments are required instead of allowing those details to be worked out through subordinate legislation.

Thus I think it is important not to see this form of legislation as something that needs to be checked at every turning; that is particularly suspect. What we want to do instead is recognize its utility and indeed its desirability but at the same time attempt to ensure that we have the most effective means to provide for accountability in terms of this instrument.

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Let me now examine what I see to be the four methods of review and control of subordinate legislation and how they may be used separately and in combination. The four that I would like to isolate are: first, more detailed instruction in the empowering legislation creating subordinate legislation; second, prior consultation in hearing before subordinate legislation is

enacted; third, judicial review and striking down for ultra vires; and fourth, post-enactment scrutiny and disallowance.

Before dealing with each of these in a little bit more detail, let me make two preliminary points. The problems and excesses which we should be trying to respond to should not be any and all that might possibly be contemplated. I think what this committee or anyone who is interested in the regulatory process should be doing is looking at what the actual problems are in Ontario at the close of the 20th century.

The second preliminary point concerning review of subordinate legislation is to just remind ourselves that this review can really be of two types: first, scrutiny to ensure that the regulation is authorized by the parent statute--I will call that authorization review--and second, review to ascertain whether the content of the regulation furthers the objects of the parent statute. I will take the lead of the outline and call that merits review.

Let me then just go through the four ways to review and scrutinize subordinate legislation that I have isolated.

The first is more detailed instruction in the main legislation. Because of the press of time or complexity of issues, it is easy for the legislative drafter and the House itself to slip into inserting empowering provisions in parent legislation which are vague and convey formulistic power to create subordinate legislation.

It is true that there may be occasions where there is a need to leave some aspect of subordinate legislation more open-ended and that these occasions can certainly be justified--for example, to allow for rapid technological change or necessary experimentation--but I think this should not be taken as a justification for a general lapse into vagueness and indeterminacy. Evaluation of subordinate legislation and its potential needs to begin at its source, the empowering statute.

Second, let me say something about prior consultation and hearing, an item also on the outline. The purposes of prior consultation are worthy. Governments will gain better understanding of the desirability and impact of proposed regulations and those commenting will have an opportunity to influence the legislation from their various perspectives. Thus, it is easy to be in favour of this process as an abstraction, but there are substantial issues of details concerning such a proposal's implementation, things like questions of timing, the amount of consultation that should take place, who should be consulted and what the process of consultation should be.

There is something of a debate between those who favour general requirements for prior consultation and comment and those who do not favour a requirement while yet recognizing the general value of the process; for example, the differences that have emerged between Professor Mullan, generally in favour, and the late Mr. McRuer, generally not in favour, that have been outlined and discussed in the memo of Mr. Kaye of May 1987 that was sent to me in that very helpful package of materials. I assume the members of this committee have that.

In this regard, I occupy something of a middle position. I favour notice and comments procedures generally but recognize that there certainly can be situations where the costs of imposing such a procedure would outweigh the benefits where, for example, the regulations are highly technical in nature



and limited in scope. In essence, I would favour, in principle, a general requirement for notice and comment but leave the details of the procedures to the specific context, and I would put the onus on those who would wish to be exempted totally to demonstrate that the costs would outweigh the benefits so as to permit them to absent themselves.

The third point is judicial review and striking down for ultra vires. This is a legislative committee and you are naturally concerned with matters of the Legislature, but of course it is important to keep in mind that there is another vehicle outside the legislative process that can be called upon to review and scrutinize subordinate legislation, and that is curial review: scrutiny of a regulation by judges essentially focuses on whether or not it is authorized by the empowering statute, and if it is, whether it is a valid exercise of constitutional powers--in this case, section 92 powers conferred on the provinces--or, again, whether there is some kind of charter infringement.

Scrutiny of subordinate legislation by judges carries with it all the generally applicable advantages and disadvantages of curial review, and they need to be borne in mind in the context of the subsequent comments I will make concerning review by this committee in respect of charter scrutiny.

Let me just quickly detail some of the advantages. Accessibility: anyone with a recognized interest can invoke the process. It is open and public. The procedures used are based on evidence and arguments which judges must take into account and evaluate. There is a provision for error correction through a system of appeals.

As well, the disadvantages of curial review can as easily be listed. In some respects, it is accessible, for the reasons I have already articulated, but from another viewpoint it can be very inaccessible. It is expensive, formal, lengthy and time-consuming in terms of the details. The decisions come from a small group of men and women who are not directly accountable. The basis for the evaluation of the subordinate legislation, while it may be sound as a matter of doctrinal law, may not reflect the factors critical in the processes being reviewed because of the distance from which the piece of legislation is scrutinized. The judgement for or against the regulation, because of the delay inherent in the litigation process, may come long after the fact, when expectations have been built around the impugned action; in this case, the regulation in question.

Let me now say something about post-enactment scrutiny and disallowance. These procedures allow an opportunity, for the appropriate legislative committee, for a sober look after the fact and detached from the pressure and strictures of creators of the legislation, but not so far removed and as cumbersome as that involved in judicial review. In any event, it is important to bear in mind that this activity does not pre-empt a role for the courts. To the point, I favour it for review, based on both grounds; i.e., whether the regulation is authorized and merit scrutiny.

However, I certainly acknowledge that there are a number of specifics which must be addressed, and I will try to do so briefly. First, who should have this power? The body most directly responsible is the Legislature, but given constraints of time and demands on legislative agenda, which you gentlemen will be aware of far more than I, I think it is unrealistic to expect the House to do this. Thus, the committee otherwise responsible for overseeing regulation and subordinate legislation seems to be a very likely candidate to do it.

Second, I think the power of disallowance needs to be clearly spelled out. Here, as indicated, I favour review on the merits as well, so that the regulations are reviewed in a larger and broader context and not simply to ensure that they are authorized by statute, although I realize this is clearly a debatable point.

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Third, I think the relationship of the committee to the Legislature needs to be clearly defined in terms of how the process is going to work, and what the relative roles are for the committee on the one hand and the Legislature on the other. In this regard, I think what is occurring in Quebec and at the federal level are useful models, although there may be some fine-tuning that is required.

On the one hand, the Legislature should have the ultimate power to decide if subordinate legislation should be repealed. Therefore, the recommendations of the committee should go to the Legislature for actual disallowance. On the other hand, I think the Legislature should not be able to simply ignore the recommendations of the committee. Thus, there is need for a device to require the Legislature to act. Hence, the default provisions in the federal and Quebec schemes strike me as a very good idea. In the absence of the Legislature taking affirmative steps to prevent the recommendations from taking effect, they would, but again, there may be some fine-tuning that needs to be done by this committee.

Let me say something about the Legislature and the charter. I strongly urge that subordinate legislation be reviewed for violations of the Charter of Rights and Freedoms. I recommend this not because I suspect that subordinate legislation is a government activity particularly prone to charter infringement. Instead, I want review based on the charter because I believe the Legislature and its emanations have at least as much to say as the courts regarding the charter.

The charter, as you will be aware, is a very complex document, much more so, say, than the United States Bill of Rights, in terms of creation of rights and freedoms.

There is much in the charter concerned with negative liberties, focused upon a traditional sense of individualism, something I think we could all respect: freedom of expression in section 2; right to life, liberty and security of the person in section 7; the legal rights expressed in sections 8 to 14. But there are clear indications elsewhere that point to the charter as the protector of group and collective rights and as the possible nurturer of these roles in appropriate contexts. For example, the provisions in sections 6 and 4 and 15(2) for affirmative action programs, which cannot be gainsaid by the rights otherwise expressed in those sections; the guarantee of minority language rights in section 23; the provision for aboriginal rights in sections 25 and 35; and the dictate, in section 27, to interpret the charter consistent with the multicultural heritage of this country.

It is clear from the text itself that the courts are not to be the exclusive articulators of these rights and freedoms. Section 1 contemplates deference to Legislatures when limits imposed are ones "demonstrably justified in a free and democratic society." Section 33 contains a legislative override that is expressed regarding rights in section 2 and sections 7 to 15 of the charter.

The central point I wish to make today is that adherence to values



enshrined in the charter should not be left exclusively or perhaps even primarily to the courts. The popular image may be of enforcement of charter rights through judicial review, but as indicated earlier, judicial review is a long, expensive, cumbersome process and the answer, whatever it will be, comes from those not directly accountable.

The charter should be viewed as a statement of high aspirations which will be primarily used by the Legislature as a guide when making difficult and complex choices among competing values in its process. It would be a real impoverishment of Canadian democracy to leave such decisions only to the courts. All of what has been said applies to subordinate legislation. Scrutiny for fidelity to the charter should not be confined just to post-enactment supervision, but should continue throughout the process, creating scope for subordinate legislation, prior consultation and hearing.

The hopes in the charter are something we must constantly work towards, but we will not achieve them exclusively, or perhaps even primarily, by the pronouncements of a handful of judges. Mostly, we will attain them through difficult and reflective decisions made in rooms such as this.

Mr. Philip: Since I guess you come down somewhere in the middle on notice and comment, I wonder if you can help me with this. Can one make the argument that notice and comment in many instances really helps the vested interest rather than the ordinary citizen who may be being protected by the regulation, by the government that is democratically elected to do that?

An example would be a regulation made under various environmental acts that would require a cleanup by a very large corporation. Notice and comment can delay that cleanup because the vested interest has the lawyers. Using the legal procedures, notice and comment could delay it for quite a considerable period of time. How do you guard against that? How do you weigh the assumption that the government is there to look after the common good against the vested interest that could be served by notice and comment procedures?

Mr. Bogart: I do not think there is going to be any easy answer to that. Let me first respond by suggesting that if you have money and are determined to either run the process off the rails or at least delay it for as long as you can, there are a number of ways you can do that. The problem you identified is, for sure, a problem in some instances, but it is not a problem that only bites on prenotice and comment. I think judicial review has to be that instance: The person with the deep pocketbook can hold things up for a very long time through court procedures. I would say this: My general framework is part cost-benefits.

My overarching view is to be in favour of it because of a notion that we do not want secret government. We are constantly looking for ways to make the whole process accountable. We are not looking for ways to make it accountable because we think that it is suspect, that it is flawed in some way or that the enterprise is illegitimate. It is just that any time anybody has power you want to make them use it in an accountable fashion. I see notice and comment as a potential vehicle for that.

Let us take your environmental example. I guess the vested interests have a way of getting in contact with government in any event, whether there are notice and comment procedures or not. They are the ones that are organized. They are the ones that have the money. What notice and comment at least has the potential to do is open up that process so that the people who are less organized or who are organized but do not have as much funding--I am

thinking here of the environmental group perhaps--at least know what is going on and who is saying what to whom. Part of the notice-and-comment procedure is that there is a common base of knowledge. You can get the process ventilated and people who are interested can respond.

On the other side of the question, I would certainly be sympathetic to the notion of goals to protect the environment. That is a power and it is a power that has to be exercised responsibly. I think persons who are affected by that, whether they be cottage owners, tenants or corporations, have a right to say how they will be affected and to respond to the wisdom of that legislative activity. I guess that is what pushes me towards being generally in favour of the process.

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Mr. Philip: I guess my concern is that the cottager is not likely to have the sophistication or the means of using the notice and comment in the way that the company polluting the lake the cottager happens to have his cottage on has. I do not know whether there is an answer to that or whether there is a solution to it. It may well be, as you say, that it is better to have it in the open, so that the cottager can at least come with his 24 other cottagers and say, "We really do smell the sewage," or whatever it is they are putting in.

Mr. Bogart: Can I say this: There is certainly no perfect answer. One of the messages I would like to deliver here is that I think no one of these methods for review and scrutiny should be viewed in isolation, that the way they are connected to each other needs to be borne in mind as well. For example, I would never suggest that if you have notice and comment, everything is tied up, that you need not worry any more, that you have devised the way to make sure this process is accountable. Far from that, I think you have isolated situations in which the weaknesses of notice and comment can be observed.

To take your example, which is not exactly concrete and we are not dealing with specifics, but the environmental area is one where--how shall I say this?--individuals who are often not well organized and too often do not have many resources are affected in a very manifest way. I think there this committee can play a very useful role in scrutinizing the governmental activity in terms of legislation, once it is actually made.

Mr. Philip: One last question: In terms of economy and efficiency, is there any way you can suggest of distinguishing between those regulations that perhaps should have notice and comment and those that are of such little significance that putting them under notice and comment is a waste of the taxpayers' money? Are there ways of doing this so that you do not have every regulation open to notice and comment, with the prepublishing and all of this kind of expense involved, and distinguish and isolate only the more important ones that there should be notice and comment on?

Mr. Bogart: Again, I do not think there is any simple solution. I certainly do accept this notion that there may be a number of regulations that should not be subject to this process and I think I was careful to try to say that, but my solution to that is to put the onus on the person or the agency or whatever that does not want to be subject to that process to demonstrate in a specific context that the cost of it would outweigh the benefits. In other words, do it on a site-specific basis and put the onus on them.

Mr. Philip: How would they demonstrate it?



Mr. Bogart: I think if they can show that the kinds of regulations they are making are detailed in nature, by and large are not controversial and the notice and comment procedures would be an expense that would be in excess of any possible benefits that would come from the notice and comment, they would discharge the onus.

Mr. Philip: I still think the problem rests with who they would demonstrate that to or what would be the check on any public servant who wanted to slip one by, simply coming up with a bunch of rationalizations published somewhere that say notice and comment is not necessary because it is--we have had regulations in the Legislature on which a minister would smile and say, "Oh, this is going to be handled by regulation and it is of very little significance," or, "This bill is of a housekeeping nature," only to discover that there is a major change in the legislation. It has not happened frequently and I cannot think of any examples recently, but--

Mr. Mahoney: Not in the last three years anyway.

Mr. Philip: I am saying that for Mr. Mahoney because he had a worried look on his face that I would come up with an example in the last three years.

Mr. Bogart: Actually, you are assisting me. I have not made something clear. I am not proposing that the judge of whether the costs outweigh the benefits should be the person who is going to be subject to this process. In other words, it is not for the person engaging in the making of subordinate legislation to say, "Oh well, I have sat in my office and thought about this, and the costs really do outweigh the benefits, so we are not going to do it." It has to be somebody external to the process.

There may be other points I would want to consider about this, but it seems to me this committee is the likely candidate for that. In other words, they make the case to this committee that they should be exempted. Similarly, for example, you will remember that when I was talking about notice and comment, I stated my general principle. I then went on to say, however, that the specific procedures for notice and comment might very well vary from context to context. I think there should be some external element that is saying yes, they can vary from context to context, but they have to be adequate in each context. For that adequacy, that scrutiny of what is going on, this committee may very well be the appropriate candidate.

Mr. Callahan: I have a supplementary to Mr. Philip's question.

Mr. Chairman: Notwithstanding that, I am going to allow Mr. Mahoney first.

Mr. Mahoney: Subject to running the risk of losing my opportunity to ask the question, I will defer to Mr. Callahan.

Mr. Callahan: I ask this supplementary in the light of the concern Mr. Philip has expressed to you. We have some statutes already that provide for notice and comment. Recognizing that we do not really have all the answers under the Charter of Rights, if you have it in one statute and it is not one that would be protected by section 1--the free and democratic society situation--and you do not put it in all of them, do you not open up all the other statutes, or all the other regulations, to a challenge on the basis that there is no provision in the statute for notice and comment?

In other words, if five or 10 statutes of Ontario provide for a

requirement, when a regulation is passed, of notice and comment being printed--let us assume that because of some of the difficulties Mr. Philip has raised, the report came out and some of us said, "No, we do not think that is an appropriate step to take," and as a result of that the Legislature says, "We are not going to have notice and comment," in what jeopardy does that put these five or six statutes that provide for notice and comment, in terms of being contrary to the Charter of Rights in that they provide for it and the others do not?

Mr. Bogart: To answer that, I have to ask a question: What is the basis of the charter right that is being infringed by the fact it is contained in some legislation and not in the rest?

Mr. Callahan: Due process, natural justice, equality before the law: I can think of a dozen sections in the Charter of Rights that could be infringed. You might not find that in the case of pollution--we have to act quickly and it is worthwhile to do that--but I am sure there are statutes that contain requirements for notice and comment which may not necessarily have a legitimate reason for having it, whereas another statute does not have it.

Mr. Bogart: As far as due process is concerned, that is section 7, "life, liberty and security of the person...except in accordance with...fundamental justice." It is imaginable that a court would give that reading to section 7. I think it is unlikely, and it is certainly unlikely that it is going to do it on some kind of wholesale basis. If you can demonstrate that your lack of notice and comment in the specific instance of a particular statute--

Mr. Callahan: Denied a person of that right.

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Mr. Bogart: Yes. It is possible to float that argument, but certainly my sense of the charter is that you would not be in jeopardy in terms of either requiring it on a wholesale basis or denying it on a wholesale basis or something in between. The courts are going to give you that kind of flexibility. The courts have manifested a certain amount of deference to legislative determinations, particularly in the section 7 context. You certainly are obliged to adhere to section 7, but regarding how section 7 is worked out in a particular context, the courts will be very mindful of the complexities of the legislative process.

Mr. Mahoney: The basis of what we are talking about this morning is subordinate legislation and regulations, and I am curious as to how you see the role of the Legislature with regard to either challenges or questions under the charter, which you refer to in your item 4. Your suggestion, as I understood it, was that the Legislature, through a body such as this, should perhaps be setting regulations, making comments or dealing with the charter, as opposed to simply accepting decisions from the Supreme Court; I assume you refer to the Supreme Court.

I am really curious as to whether the legislative process, as cumbersome as it is, would not simply get bogged down in challenges in an area where really the authority is perhaps less than clear as far as setting regulations or setting precedents or dealing with challenges under the charter goes, and I wonder if you have a response to that.

Mr. Bogart: I think my response is twofold. One is at a substantive level and one is at a procedural level. Let me deal with them in reverse order.



First, if we are going to leave to the court the business of the working out of the charter and what it means, we are requiring people, some of whom will be very well endowed with money, many of whom will not be, to go through an extremely lengthy and cumbersome procedure to give meaning to that document. It seems to me an advantage or at least a different way of proceeding which the Legislature and legislative committees have, which ought to be borne in mind, that they can take these issues up and can contemplate the implications of the charter in a way that spreads the cost of the activity and is not necessarily as lengthy a process. That is point 1 in terms of procedural differences.

The second thing is that I think it is a mistake to equate charter rights and what they mean with articulation by the courts. I think that is a peculiarly American idea, this notion that whatever the fundamental document means, it is what the courts say it means. That is nowhere written in the charter; indeed, the clues in the text are to the contrary. The clues in the text suggest that the Legislature and legislative committees are to take a very active role in working out the meaning of the charter, and that what will evolve in time is a kind of dialogue between the courts on the one hand, with their advantages and disadvantages, and the Legislature on the other hand, with its advantages and disadvantages. I think it is a real mistake, every time the Legislature comes across a thorny constitutional issue, particularly a charter issue, to say: "We do not know what the answer is. We will leave it to the courts." I think the working out of this document is as much the business of the Legislature as it is the courts.

Mr. Mahoney: The Legislature currently has a committee dealing with the Meech Lake amendments, and I assume that would fit into the category that you are referring to.

I am more curious as to whether or not you are suggesting a committee like this would get into more detailed analysis, deal with challenges and, for example, disagree with a Supreme Court decision in a particular area that was challenged. Are you suggesting that we get down to that level of detail and perhaps even hold hearings? Are we talking into the wind here?

Mr. Bogart: Again, everything is cost-benefit, right? You have a finite amount of resources and you have to decide how best you are going to spend them. I am certainly not advocating a defiance of Supreme Court of Canada decisions, but as you yourself pointed out, there are many questions that will arise where the answer from the courts is no answer because the issue has simply not been faced yet. It is in those kinds of situations where all I am suggesting is that this committee has some role in articulating and thinking about the implications of the charter.

Mr. Callahan: Just to follow through on Mr. Mahoney's question, because obviously someone must have told you, or you heard when we were questioning Professor Janisch, that Quebec, in its response to us, told us that we should avoid inclusion of that power to look into the regulations on the basis of the Charter of Rights, and I think Professor Janisch indicated that if we did do it, we should do it in only the most obvious case. If there was a doubt, we should then leave it for the courts to determine.

I gather what you are advocating is that we should not shrink from that position, that we should, in all cases, apply the charter and, if it offends the charter even obtusely, we should turn it away if we have a power of disallowance and say we are not going to accept that because of that.

Mr. Bogart: I guess it depends on what you mean by "offends the

charter...obtusely." I began my comments on the charter by making very clear that I am not singling out subordinate legislation as somehow a particular candidate for charter infringement. I certainly have no evidence that people who have the responsibility for making subordinate legislation are going around trying to infringe upon basic rights and freedoms.

I think there is going to have to be a showing of reasonably clear infringement, something that emerges from debate and discussion within this committee, and advice given to this committee, all done within reasonable dimensions. I am mindful of Mr. Mahoney's point that there is a limited amount of resources that can be spent on any enterprise.

I guess all I am saying is that legislatures have a great deal to say about the working out of basic rights and freedoms. They had a whole lot to say before the charter. That is how we ran this country.

Mr. Callahan: Probably we had unlimited authority.

Mr. Bogart: You had unlimited authority, but I think you also had a sensitivity to competing values whenever you engaged in legislative process, and that sensitivity to competing values is part and parcel of working out the meaning of the charter. The charter is not self-executing. It is a complex document. It will call for very complex value judgements. I guess what I am saying is none of us can shrink from that and, in many instances, legislatures know as much about those values and the relationship as courts do.

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Mr. Callahan: Let me just put that in concrete terms. Let us say that the the Minister of Tourism and Recreation came forward with a regulation to this committee that 13-year-old girls, in playing hockey, were not to be involved in any contact. I bring this to mind because, coming down in the car, I heard Justine Blainey on CBC.

We know that the Supreme Court of Canada has ruled, at least in terms of girls playing with boys. So we get that regulation before us, and if I understand what you are saying, we should not shrink from deciding that the regulation might be appropriate simply because in a slightly different context the Supreme Court of Canada has ruled that violates the Charter of Rights and Freedoms. We should pass that or we should comment favourably on that. I think that is what you are saying.

Mr. Bogart: That you should comment favourably on it?

Mr. Callahan: Yes, we should allow it to go through.

Mr. Mahoney: Should or should not.

Mr. Callahan: Should or should not, yes, depending on how we view it.

Mr. Philip: Substitute a 16-year-old woman.

Mr. Callahan: Fifteen. This is why I asked Professor Janisch as to whether or not we should take a middle-of-the-road approach, not do what Quebec suggests and totally ignore the charter and not go the other extreme and say that in fact we will strike down every regulation that comes before us even if it has only the slightest possibility of offending the charter, as opposed to the middle-of-the road situation that Professor Janisch seemed to agree with.



If there is a doubt, we should resolve it against the regulation and not allow it to come forward so that it can wind up being challenged and going into the whole process you and Mr. Philip addressed of someone having to spend megabucks to go all the way up to the Supreme Court of Canada and have them say up there--actually they would not say it, but they could say, "Well, you members of the standing committee on regulations are certainly not very astute to have done this, recognizing that we already pronounced on it." I am not sure. I think you are saying that we should not shrink from anything.

Mr. Bogart: Again, I do not like the notion of "anything." I am certainly not suggesting, as I thought I made clear at the beginning, that this committee should begin to go on a frolic through every regulation, looking for any possible charter infringement. Presumably, what will trigger that kind of scrutiny is that someone in the committee, either on his own steam, because of advice of legal counsel or because of the usual process, says: "I have some reservations about this. They have to do with section 7. The argument goes as follows." If everyone else on the committee says that is just wildly implausible, I assume that is going to be the end of it.

If on the other hand, two or three other people say, "Yes, I see the argument about section 7. I think we should think about this. I think we should look at it in terms of section 7," then the process will be engaged.

Mr. Philip: I think you have hit the nail on the head. Surely the role of a committee like this would be (1), to try to work by consensus or close to consensus and (2), to act as an early warning system. If the government does not take the early warning, woe unto it then. That is its problem. We are not there to act as the Supreme Court of Canada, but we might be able to save somebody from ending up at the Supreme Court for a more flagrant violation. If you start going further than that, then I think you just bog down the committee.

Mr. Callahan: I think I understand what you are saying, except it possibly does produce the result that occurred once federally, at least. I do not think it was a violation of the charter. It was outside the scope of the act. I am saying it is contrary. It is outside the powers of the act under the disallowance powers, and we then get into the political issue of the minister's not wanting to withdraw it.

Mr. Bogart: Yes.

Mr. Callahan: So the bells got rung, I guess, and the vote came down in such a way--

Mr. Chairman: Presumably the function of the committee ought to be, though, in that kind of context, to ring the alarm. Whether people decide to answer the alarm is a secondary issue, be it in the legislative chamber or be it in the appropriate court.

Mr. Bogart: Within this committee, we have to separate the two issues here; that is, charter scrutiny and the level at which that will take place. For sure, that has to be thought through. All I am saying is that I would be for thinking through that process.

The second thing is that what generally should happen when the committee thinks there is an infirmity in a regulation, for whatever grounds it is going to decide, it should be able to review: charter not authorized by the statute, not consistent with the policy statute, etc., etc.

The question becomes, should its powers go no further than recommending to the Legislature that this regulation be withdrawn or should it have some enhanced power, which seems to be the case in the federal and Quebec act; indeed, should it go even further and not obviate any problems that seem to arise in terms of it recommending that the regulation be rescinded, the matter going before the Legislature, the Legislature not acting on it and therefore it coming into effect but then the minister refusing to actually engage the mechanism so as to rescind it.

I think where that process stops depends on how much power the committee thinks it should have and, obviously, people commenting on this committee's report. I think that is a general issue and is not just tied to charter issues.

Incidentally, on that, as I think I indicated in my comments, if you are going to give this committee power to scrutinize, then it has to be power that really is there. If something can be recommended to the Legislature and then just ignored, what incentive is there going to be for you gentlemen to go through the kind of difficult and painstaking labour that is going to be involved in reviewing this kind of legislation?

If you really believe that subordinate legislation should be scrutinized, then I think there has to be way to have it rescinded when it does offend the grounds for review, whatever they are determined to be.

Mr. Callahan: I am not arguing against disallowance. I agree with you that if you are going to do it, you have to have the mechanism to carry out the function as best you can within the framework of any political side of it. As I say, I am not arguing against the charter, because I thought that was very important when I discussed it with counsel, but I do have concerns.

In re-reading that Quebec statement, what they are saying is that recognizing the charter is in its infancy, recognizing that we have very few guidelines to go on and recognizing that there is a section 1 which allows an overriding of certain rights under certain circumstances, by using discretion and doing it in only the most blatant and obvious charter violation, and assuming we have this power to stop it, are we not interfering with the traditional role of government and the executive to pass regulations, hopefully to implement a policy that is very necessary? Are we not sending them back to the drawing board, saying, "My God, this committee has said we cannot do this. Now we have to go back and--"

Mr. Bogart: If what I was saying were focused only on that and were carried to an extreme, I would be the first one to resile from it. This notion that this committee, under the banner of the charter, would then begin to hobble the necessary and useful activities of government would be something that I would not support. But let me just put the other side to you. That is section 1 and the deference that section 1 calls for in terms of courts and their relationship to other branches of government.

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It seems to me that if a provision that could be impugned on charter grounds is shown to be scrutinized by this kind of committee in a thoughtful and reflective way, that makes it more likely to be protected under section 1 in a way that, in that context, you might very well want it to be protected. In other words, what you would be saying to the courts is: "Look. We see the possibility of an argument that there is a prima facie violation of section 7 or section 15 but we have thought about this and we have waived those



arguments at a prima facie level against the policy objectives that this regulation is trying to get at. We think that when you go through that process of evaluation and careful weighing, it comes out in favour of the upholding of that regulation."

So I do not see this process as only one of striking down impugned legislation. In some instances you will uphold impugned legislation because there will be a signal to the courts that this thing has been scrutinized by a legislative body.

Mr. Callahan: I understand what you are saying, but I am more concerned about the opposite pole of that. It is too bad we have not had the fellow here from Quebec because I would like him to explain section 16. Mr. Chairman, I will just read it to you if you have not seen it. He says, "I believe the terms of reference of the standing committee should not touch upon legal issues such as conformity with the Charter of Rights and Freedoms and with constitutional statutes."

His rationale, or her rationale, or the rationale of whoever wrote it, is that it falls to the regulation-making authority as part of the executive power to ensure the legality of what it does before acting. "Once a regulation is made it is up to the courts to decide any question of its validity, i.e., the Constitution. I do not think a parliamentary committee should discuss such questions. Any conclusions it could come to would have no legal effect."

Mr. Bogart: I am sorry. Were you finished? Excuse me. I do not mean to interrupt.

Mr. Callahan: Yes. That is the comment from Quebec.

Mr. Bogart: Again, he or she is not here. Perhaps it would be interesting if we could have an exchange, but all I can say is that argument taken to an extreme would negate any scrutiny by this committee.

Mr. Callahan: I know. It is broader. What I am suggesting is that if there is a doubt, the doubt be resolved in favour of the validity of the regulation so it can go ahead and then be challenged in the appropriate forum.

Mr. Bogart: Yes. I do not want to go on longer than is useful for the committee, but I think we have to ask, "What does that mean?" Does that mean if anybody around the table says, "I think it is valid," that is enough to just send it on? This is a process that has to be done in good faith by reasonable persons. I guess what I am calling for here is a reasonable amount of scrutiny done based on a careful evaluation of the arguments for and against.

Mr. Callahan: Thank you.

Mr. Chairman: I have Mr. Dekany with a couple of questions. Subject to anything else that members indicate to me, I think that will be all for today.

Mr. Dekany: One of the problems this committee is grappling with under the heading of notice and comment is what Mr. Philip raised earlier in his questioning. It is a kind of selective notice and comment. Then how do you select? There are two models that we can look to. One is the present Ontario model where we have specific statutes requiring advance publication, advance notice. Just extend that model to other statutes, suggesting to ministries that they include that in their act.

The other model that we have before us is Quebec, which, as you are probably aware, requires prepublication of all regulations except in certain instances. One of them is the example Mr. Philip raised, an emergency situation such as an environmental spill. That is one of the express exceptions--if the urgency of the situation requires it, and also if it is contrary to the public interest to have advance publication or if the act itself approves that there be no prepublication. That is the Quebec system.

In that system, there is a requirement that if there is no prepublication, the reasons for it be given when the regulation is published. That is the onus you are suggesting. On the question of who is the judge, the public is the judge because the public reads the reasons, subject to the court passing on the reasonableness of those reasons. Which system do you favour, the Quebec model or an expansion of the Ontario model?

Mr. Bogart: If you are asking me just to choose between those two, my inclination is towards the Ontario model. It strikes me, for example, that this business of no prepublication if it is in the public interest--what does that mean? You could gut the requirement by giving a very liberal sense of what public interest is. To say, "Oh well, that can be reviewed in the courts," can be a very unwieldy and expensive process. Second, it suggests that the courts themselves will know what the public interest is and where it lies in that particular situation. Just from that, I have strong reservations.

The other thing I ask is a kind of empirical question. How does the Quebec model work? Does it work satisfactorily or are there complaints about it? Ask some people who are engaged in the process, people who make these regulations, people who consume them. I do not think this exercise should be done as an abstraction. It should be tied to what is on the ground in Ontario in 1988 and with reference to what is going on elsewhere in 1988. That may sound strange coming from an academic, but I am also a bit of an empiricist.

Mr. Chairman: Right. Interestingly enough, next Wednesday in particular we have scheduled a whole day of representatives from various economic interests and associations specifically to provide that kind of input.

Mr. Bogart: I applaud the committee in that regard. Take account of what the problems really are and what the responses are.

Mr. Dekany: You have advocated the charter. One of the suggestions to this committee has been that it scrutinize legislation, not just regulations, that acts be referred to it for charter consideration because of the expertise this committee would have in that field, and if it found any potential violations in proposed bills, to refer them to the appropriate standing committee. Would you be in favour of such a function for this committee?

Mr. Bogart: Can I answer at the two levels? Again, off the top of my head, because I did not know about this proposal, for the reasons I talked about in terms of charter scrutiny by the legislative process, I would be in favour of such a process going on. I would have some reservations about this committee doing it, in terms of the committee spreading itself too thin.

If you are going to start looking at all the issues around subordinate legislation that have been raised in that memo and that have just been raised in terms of the exchange between yourselves and Professor Janisch and yourselves and myself, it is a big order to take on scrutiny of all bills in terms of charter issues. As I said, on the face of it, I am in favour of such



a process. I wonder if it is something that should be folded into this committee's agenda, but again it comes to a matter of the resources of this committee, however those resources are defined.

Mr. Dekany: I understood you to advocate that this committee should also consider the merits of subordinate legislation.

Mr. Bogart: Yes.

Mr. Dekany: It has been expressed to us by the witnesses that there are grave dangers in doing this because it opens up problems of partisanship and the committee does not have the resources. How would you overcome those problems with the committee, if your suggestion was adopted?

Mr. Bogart: Sure. I think any one of these tasks that the committee is contemplating could fall heir to partisanship, whatever that means. I am not quite sure what that means.

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Mr. Callahan: If you sit around here long enough, you will find out.

Mr. Bogart: I mean, that could defeat the whole legislative process. Partisanship carried to extremes can have negative effects indeed, but people viewing a matter from their particular political beliefs and their constituents' interests does not seem to me, on the face of it, to be such a bad thing. Any kind of scrutiny of subordinate legislation that we have talked about could fall heir to that when carried to an extreme.

The question I have to ask this committee is, is that how it operates most of the time, or most of the time does it try to engage the process in a reasonable manner?

Mr. Dekany: What about the problem of resources?

Mr. Bogart: Again, I think there I simply have to acknowledge that issue and have to defer to the committee. If I may just make a small suggestion, what I might suggest is the committee gauging the kind of resources it has, deciding what it would like to do, given the kinds of issues and questions it has entertained through this process and then prioritizing them. There will be some that you will want to do, but there will be others that will have the most insistent claim upon those resources of the committee. You are going to have to go through that careful process as well, I think.

Mr. Dekany: Thank you. Those are my questions, Mr. Chairman.

Mr. Callahan: Could I get a point of clarification? You say, or at least I gather from counsel's question to you, that we should comment on the merit of the policy. It would seem to me that, within the general context of the way this place works, the statute itself is an expression of the policy.

I caution that because I recognize that some of these final clauses, or things to be done by the Lieutenant Governor in Council, are becoming much broader and perhaps even making that policy so broad that it would cover almost anything. But if that is not done, then surely by commenting on the merit of the policy we are in fact doing in this committee what presumably should have been done in the Legislature when the bill itself that gives the enabling power was debated in terms of whether the policy was good, bad or

whatever, and amendments should have been submitted at that time and not through the back door of us coming here and scrutinizing bills.

Mr. Bogart: I take your point. My terms of merit are not the merits in terms of the act itself or the policies that issue forth from the act. My meaning of merits, as I defined it at the beginning, was what is the content of the regulation and is that content consistent with what the overall intent and purpose of the legislation is.

Mr. Callahan: OK.

Mr. Chairman: Professor Bogart, you have provided an excellent source of information and opinion. We are quite grateful for your lengthy contribution and helpful contribution to the considerations of the committee. I want to thank you personally and on behalf of all the members.

Mr. Bogart: Thank you for asking me. It really was a privilege to appear before you. If I can be of further assistance, I hope you will not hesitate to ask.

Mr. Chairman: Thank you very much. I guess that, since there are no other questions, we are concluded for this week. We will return next Tuesday at 10 a.m. sharp and we have a fairly heavy agenda all day Tuesday, all day Wednesday and all of Thursday morning. Do we know what room yet?

Clerk of the Committee: Committee room 2.

Mr. Chairman: Committee room 2 is where we will be next week. I want to thank all the members of the committee for, I felt frankly, a very attentive participation and active participation all week.

Mr. Bogart: The other thing I would ask, Mr. Chairman, is whether I could see the fruits of your labour at some point. I would be very interested to see what the outcome is.

Mr. Chairman: We are hoping we will see that too.

The committee adjourned at 12:55 p.m.





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STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

REGULATORY PROCESS

TUESDAY, MARCH 29, 1988

Morning Sitting



STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

CHAIRMAN: Fleet, David (High Park-Swansea L)

VICE-CHAIRMAN: Beer, Charles (York North L)

Cleary, John C. (Cornwall L)

Fawcett, Joan M. (Northumberland L)

McCague, George R. (Simcoe West PC)

Pollock, Jim (Hastings-Peterborough PC)

Pouliot, Gilles (Lake Nipigon NDP)

Ruprecht, Tony (Parkdale L)

Smith, David W. (Lambton L)

Sola, John (Mississauga East L)

Swart, Mel (Welland-Thorold NDP)

Substitutions:

Lupusella, Tony (Dovercourt L) for Mr. Beer

Stoner, Norah (Durham West L) for Mrs. Fawcett

Clerk: Manikel, Tannis

Staff:

Kaye, Philip J., Research Officer, Legislative Research Service

Dekany, Andrew C., Legal Counsel

Witnesses:

From the Ministry of Labour:

Millard, Tim J., Assistant Deputy Minister, Occupational Health and Safety  
Division

From the Ministry of the Environment:

Piché, E., Director, Air Resources Branch

Hewings, Dr. John, Supervisor, Regulation Development and Environmental  
Assessment Unit, Emission Technology and Regulation Development Section,  
Air Resources Branch

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Tuesday, March 29, 1988

The committee met at 10:03 a.m. in committee room 2.

REGULATORY PROCESS  
(continued)

Mr. Chairman: I would like to draw two matters to your attention. First, you have in front of you two written submissions. One is entitled Briefing Note, dated March 28, 1988. That will be dealt with momentarily, I understand, by Mr. Millard, who is our first witness today. Mr. Millard is the assistant deputy minister for the occupational health and safety division of the Ministry of Labour.

In addition, you have in front of you a written submission from a representative of the regulations committee in Saskatchewan. That is for your benefit to read. We can talk about that later, if you like.

I also point out that I have had some very preliminary discussions about having additional time given to this committee starting in April. I am informed that I require a motion from the committee to the effect that it requests from the respective House leaders additional time to sit during April, presumably Wednesday afternoons. Can I have a motion to that effect?

Mr. McCague: Excuse me, Mr. Chairman. Can we leave that until tomorrow, until we check our schedules?

Mr. Chairman: There is no particular rush on this.

Mr. McCague: With our 16 members, we do have a problem. It is a matter of being in the House, being in committees and being here in addition. It is a problem. If you do not object to bringing the matter up tomorrow morning, I would appreciate it.

Mr. Chairman: I have no problem dealing with it tomorrow, if that is the will of people here.

Mr. Sola: Maybe you could let the New Democratic Party know about that as well.

Mr. Chairman: I raised it last week, in fact, both during the session and informally. The only reason I want to have the motion is so that I can get it on the plate of the House leaders. In reality, that is where this whole thing is going to be negotiated for timing. Everybody is cognizant of the problem, but I am happy to deal with it tomorrow.

Mr. McCague: You can either seek my co-operation and that of the NDP or you can pass the motion and I will object to it with my House leader and make sure the NDP does also.

Mr. Chairman: We can take care of the objections in any order that you wish.

Mr. McCague: Just to get it square. There is no hidden agenda.



Mr. Chairman: I am glad there are no illusions by anybody on this committee.

Mr. McCague: Thank you, Mr. Chairman.

Mr. Chairman: That being your entrée, Mr. Millard, we now turn to you and hope you will be able to enlighten us all with respect to the regulatory process as it has affected the Ministry of Labour. If you would simply make whatever presentation you think is appropriate, I am sure there will be some questions coming from the members subsequently.

#### MINISTRY OF LABOUR

Mr. Millard: Thank you very much, Mr. Chairman. Let me thank you for inviting me here and giving me the opportunity to speak to you with respect to the regulation-making process in the Ministry of Labour.

I am the assistant deputy minister of the health and safety division. The mission of our division is one of identifying and reducing the risk of accident and illness in the workplace. We do that through the development of policy, legislation and regulation and an information product that we deliver to the workplace.

Our philosophy is really one of the internal responsibility system, and I think that is important in terms of my later speaking about the consultative process that we use in regulation-making, or even in the development of policy.

The philosophy is one that the workplace participants, both workers and management, have the right to participate in a health and safety program and in making decisions about their health and safety in the workplace, a philosophy of right-to-know so that every worker knows the hazards he is exposed to in the workplace. Of course, in the Ontario legislation is the right to refuse unsafe work, based on the knowledge of hazards associated with the job. That is not a universal right acknowledged in all legislation in all provinces and in all jurisdictions. We call it the internal responsibility system, and it is one that depends very much on a full and open disclosure of information relating to hazards in the workplace.

Let me say first that I am absolutely not an expert with respect to the Regulations Act. I hope that we are competent with respect to the regulatory process of trying to regulate health and safety in the province, but as it relates to the Regulations Act, I am not an expert.

We think it is important in any regulatory process, first, to identify who are your stakeholders and who are your clients. You will appreciate that that is a difficult job sometimes. Our job is compounded by the fact that there is an organized labour movement in the province and there is unorganized labour in the province. The organized labour movement is an easy client group and an easy stakeholder to identify. The unorganized labour component, which is approximately 67 per cent of the workforce in Ontario, is a much more difficult client or stakeholder to access in consultations.

We have to identify very carefully what the needs are, and we have two methods for identifying the need for regulation or intervention in the workplace by way of policy or whatever else. One is through our own internal system. We have a cadre of inspectors, some 230 inspectors across the province who deliver the product to the workplace. Their job is one of compliance monitoring.

Each time they enter the workplace, of course, they speak to the health and safety committee members as their first point of reference in the workplace; that is composed of workers and management and that is often where needs are identified, where problems are identified. As a result, our inspectors have the capability of advising us, through our network internally, of what they see as needs identified for further regulation in the workplace.

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We also have a large external client group we access on an ongoing basis--and I will talk in more detail about that--which identifies needs directly to us from the external clients.

We have made a decision with respect to our Occupational Health and Safety Act to prescribe a notification process for the regulating and designation of hazardous substances in the workplace. I think that probably is one of the reasons I have been invited here, because that is not a universal happening in most statutes.

Section 22 of our act says, "Prior to a substance being designated under paragraph 14 of subsection 41(2)"--designation means there is a large regulation of the way in which a substance may be used and exposure values for a substance a worker may be exposed to, maximum levels in the workplace and also a health surveillance program for substances. This one, for instance, is for isocyanates--"the minister

"(a) shall publish in the Ontario Gazette a notice stating that the substance may be designated and calling for briefs or submissions in relation to the designation; and

"(b) shall publish in the Ontario Gazette a notice setting forth the proposed regulation relating to the designation of the substance at least 60 days before the regulation is filed with the registrar of regulations."

So we have a process established in the statute for that one type of regulatory work we do, where we designate a substance and regulate the use of that substance in the workplace. Our consultative process, as it relates to public modification in the Ontario Gazette, is prescribed in the legislation.

We made the decision, in addition to being consultative in our approach, to also be participative. I will talk about the way we have tried to involve the clients and stakeholders in the actual development of the regulations and not just in being consulted on our proposals for regulation.

Regulations, of course, have to be responsive to the needs that have been identified. They have to be timely. I think the process of regulating needs to be adaptable to case-by-case circumstance and has to have built into it a set of checks and balances.

In the paper you have before you, you will note that the background statement references the requirement in the act for the notification period for regulating hazardous substances.

We have an Advisory Council on Occupational Health and Occupational Safety. In August 1978, that advisory council made some specific references to the minister with respect to a consultative process; that advice was accepted and incorporated into six distinct phases of our regulation-making process.

The first is that we assemble the background information and we do



preliminary consultation with the industry, with labour and with relevant associations. If I may, I would just like to jump for your benefit to the third page of this submission, which identifies some of the stakeholders in occupational health and safety in the province:

Labour unions; the Workers' Compensation Board; politicians; the workers; a number of employer associations, such as the Industrial Accident Prevention Association of Ontario and the Construction Safety Association of Ontario; a number of technical societies, such as the Association of Professional Engineers of Ontario and the Occupational Hygiene Association of Canada; a number of research organizations; the federal agencies who have some jurisdiction as relates to radiation safety, for instance, in Ontario; the media, of course, are one of the stakeholders; the federations of labour, in particular the one mentioned here, the Ontario Federation of Labour; various councils of trade unions, such as the Building Trades Council, and the employer community in the province. There are a large number of stakeholders that have to receive the background information and be consulted in the first instance.

We then publish a notice of possible designation of a substance and do analysis of the comments received in the first phase. At that point, we distribute the health effects document. I will explain what a health effects document is. It is a document, which we either do internally with our scientists and our medical doctors or contract to have done by a university or another professional, to determine the health effects and the dose-response relationships of these substances. That is distributed to the same set of stakeholders, and their comments are received with respect to those.

We publish our proposed regulation and the analysis of the comments that had previously been received. We then go to a public meeting and a public hearing forum to review the comments, to hear comments and review comments after that meeting and then of course to make our submission to legislative counsel for a regulation to be passed.

As part of the refining of this process, the health effects document really should be the first piece of information available to people so that they understand the nature and the hazardous nature of a substance. That now is distributed to all our consultative group during the first phase.

You will note that in July 1984, based on the council's advice, the ministry added the additional step of publishing notices on final regulations which included the rationale for the changes made from previous submissions to the public.

In January 1987, our advisory council indicated it would no longer review the consultative process because it found fault with the way we were doing that process. You can see that despite the best efforts to have a consultative process that was in keeping with the advisory council's advice, the council still found fault with it. They found fault with it as a result of both organized labour and the employer community's concerns with the process.

Labour complained quite bitterly that the process was too slow and time-consuming. They felt it was too closed and secretive. In addition, they claimed they lacked sufficient resources and the power to effectively participate. Industry complained that the process was too slow and time-consuming, that the priorities were incorrect and that our regulations were inflexible.

In February 1984, the Ontario Federation of Labour proposed a new

approach, which was that all designated substance regulations should be developed by a committee of labour and industry, that there should be open hearings held to discuss the decisions, that all substances be classified based on the degree of hazard, with appropriate control strategies and that interim standards be adopted for all substances.

You can see there were a number of points to their agenda. One was the regulatory process. The consultative process was one that they felt did not meet their needs. They also wanted to prescribe the process by saying, "Here are some of the things that will be done before we will engage in the process."

I think I can jump ahead to June 1987, when we accepted the principle of a bipartite committee consisting of labour and industry to develop--and that is important: to develop, not just to review--and review regulations for hazardous substances. In November 1987, we appointed the members to that committee. We have nine members of labour and nine members of the employer community, and I chair that committee.

Our primary objective is to develop and review regulations for hazardous substances. We have secondary objectives. They are to ensure, as far as possible, that the regulations for the substances effectively minimize the risks to health and safety in our workplaces and that the regulations and exposure limits developed or approved by the joint steering committee are acceptable to both employers and workers in Ontario. That is the part I see as really moving from a consultative approach to a participative approach in regulation development.

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As a result of, I think, four meetings to date with the committee, we have proposed a different process for developing regulations. That is the page you have with outlines, really, of a critical path for the development of hazardous substance regulations. What you will note there is that we have used both labour and management in the Joint Steering Committee on Hazardous Substances to develop regulations and then also to do the public consultation as a result of that development by the bipartite committee. We have built in notification periods, 90 days and 30 days. We have also built in formal public hearings where both labour and management will be represented on the panel and have thus far slated that I will chair each of those public hearings with a labour representative and a management representative sitting on my panel during the public hearing process.

The import of all this is that notwithstanding the fact that a process was established in the statute for public notification with respect to regulation-making, it was still found to be wanting by our clients. I think the object lesson for me in all of that is that if you have a prescribed notification process in the statute, you cannot let that substitute for good consultation. It should only be seen, I think, as a part of a good public consultation process. I think I accurately reflect my client group's concern that this kind of prescribed regulation-making process is all right for lawyers because they read the Ontario Gazette; a lot of others do not read the Gazette. They feel there needs to be a much more proactive way of contacting your stakeholders and your client groups. My inclination is to very much agree with them and see this as simply a part of a consultation process.

In government terms, I think we probably have an aggressive regulatory agenda, because there is a large demand for the protection of the health and safety of workers in the province. One of the ways to do that, of course, is to develop regulations.



This is a process we have adopted for hazardous substances. All of our regulations, of course, do not pertain specifically to hazardous substances. We have a number of procedural regulations.

This book is prefaced by the Occupational Health and Safety Act and then has all the regulations for mining health and safety pursuant to the regulations. They are very much procedural regulations that essentially go about telling the workplace parties how to do the job safely. Whether it is blasting in a mine, a ventilation system in a mine or a hoisting device in a mine, there are procedural prescriptions in the regulations on how to do that safely.

In the mining sector, we have a joint committee that we call the Mining Legislative Review Committee and it is composed of labour, management and government; Ministry of Labour. That group reviews and develops regulations for the mining health and safety regulations. No regulation gets passed in mining health and safety until it has been through that committee.

I would certainly be leading you astray if I said there is always consensus among labour and management with respect to what the regulations should be; that is not always possible, but at least they are discussed there. They are discussed in an open way and all the points of view, the disparate and opposing points of view, are brought to bear before the regulation is pursued. Of course, the objective in those committees is to reach consensus with respect to regulation.

In the construction sector, there is a joint labour-management legislative committee for construction regulations. That has been established as a result of the Construction Safety Association of Ontario bringing labour and management together and saying, "Look, we need a process whereby we can tell the Ministry of Labour what we need by way of regulation and help it develop that," and it has been successful.

In much of the industrial sector, which in our parlance is other than construction and mining, we have not had that type of committee in place to date. At the present time the director of the industrial health and safety branch, Tim Casey, has corresponded with labour and management in the province and we are establishing a similar committee for the industrial health and safety regulations.

We also do some very specific regulation-making. We have been involved in a process of developing a set of health and safety regulations that are sensitive and respond to the needs of health care facilities in the province. To develop those regulations, we have had in place a committee of health care specialists, union representatives on hospital staff and management staff of hospitals and health care facilities to help us develop a set of regulations that meet their needs, some very unique ones: firefighters' protective equipment, for instance. Many of the fire departments in the province, of course, are voluntary fire departments and they do not have a good infrastructure for developing a health and safety program within their own workplace, if you will, because they are volunteers.

We have established a labour-management committee there to help us develop regulations for things like protective equipment, whether it is respirators or whether it is the types of overcoats they should wear to protect themselves.

That is a brief overview of the kinds of issues we deal with and the

kind of regulatory process we are striving for. I repeat once again that I believe any regulatory process needs to be timely and it needs to be adaptable to the circumstances that prevail at the time with respect to the need for a regulation. In that system of consultation and participation in regulation-making, I believe you need a set of checks and balances and we have used our clients and stakeholders as that set of checks and balances in helping us develop those regulations.

Mrs. Stoner: That was very informative, and as a result I have a number of questions. On your committee, what kind of technical expertise do you have available in looking at hazardous substances?

Mr. Millard: We have both technical and administrative expertise sitting on the committee itself, the nine members of labour and the nine members of management, but by and large those people will bring to that table their constituency positions, as opposed to bringing the good technical knowledge. To address that, we have recognized and built into our procedure the need for task forces to develop technical recommendations for us.

My health effects group will work as a science secretariat to those task forces. If we need outside consultants and outside professionals, we will use those as science secretariat to the task forces. Also, my program development unit in the past had developed all of the hazardous substance regulations, cost benefit analysis, the extent of the use in the workplace. Those people will also be a science secretariat to the task force. What I am doing is making the Ministry of Labour staff my science staff, a science secretariat to this committee. That is where we will garner our technical expertise, both internal and external.

Mrs. Stoner: How does the committee decide which substances are going to be reviewed?

Mr. Millard: We are just developing at the present time the sort of criteria we will have to use to set the priorities on the substances to be regulated, but perhaps I can tell you some of the kinds of things we will have to look at. One is, what is the nature of the hazard they present? Are they carcinogens, for instance? Are they irritants, sensitizers such as isocyanates? Isocyanate is a sensitizer. We will have to look at their toxic impact on humans, first of all.

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Then we will have to look at the extent to which they are used in workplaces in Ontario. We will have to look at the technology available to control them. Prohibition is one of the tools we have available to us. It is not often used, but it is one that is available to us. We will have to look at those kinds of criteria to determine which ones we should take on on a priority basis.

Mrs. Stoner: How many substances would be under review at any one time?

Mr. Millard: I cannot tell you that right now because we are still getting to that step, but over the last six years we have designated nine different hazardous substances. That was deemed by all parties to be far too slow. With the way we are deploying our resources, I think we could quite conceivably handle a number of substances at any given time, with the right task force approach to it.



Mrs. Stoner: How many opportunities within the structure are there going to be for the stakeholders to be directly involved and to have some input?

Mr. Millard: On the third page, which lays out the procedure, you will see, first of all, that the stakeholders, the nine labour representatives and the nine management representatives on the joint steering committee that I chair, have an obligation to network and consult with their constituencies. They do not just represent their own organizations. They have developed a networking system. They consult with their much broader constituencies so that they bring those constituency positions to the table.

They are involved at the first step, that is JSC, the joint steering committee. They determine the substances to be considered for regulation. They establish the joint task forces to undertake the study. They receive the recommendations from the joint task force. They publish the intent to regulate. They review the comments from the public meetings and the public notification period. They review any changes to the draft. In fact, they charge the task force to come back to them with those revisions and they sit on the panel during the public hearings, so they are involved from the beginning to the end of the process.

Mrs. Stoner: One last question on the mining aspect that you dealt with: Where do you stand with the review of regulations on air quality and enforcement of protective measures?

Mr. Millard: Air quality has so many facets to it, whether it is indoor air quality in offices, air quality in mines or air quality as a result of aluminum dust in plants.

Mrs. Stoner: Specifically mining.

Mr. Millard: In mining, I think perhaps you are aware that we have a committee specifically looking at ventilation in mines and air quality. Some of those lessons, of course, have been learned in a difficult manner in retrospect; for instance, the compensability of lung cancers attributable to gold mining experience. That is not a sufficient way, obviously, to learn that there are hazards existing. That is why we have a committee right now looking at air quality in mines and at our ability to improve ventilation systems.

We are looking at arsenic in underground mines, for instance, and the health effects of arsenic. Is arsenic in underground mines bioavailable?

Arsenic occurs in arsenopyrite. It is bound up in a compound in underground mines and we have to determine whether it is bioavailable. If it is available to the body in that form, what are the impacts of arsenic on that body? How can you develop ventilation systems to reduce radon in uranium mines, arsenic in underground gold mines, a number of those?

It is a long, slow process of determining what the science really means because the science changes, as you can well appreciate. This is a dynamic area of science: our understanding of the human organism and the assault and impact of substances on that human body. That science changes almost on a daily basis in terms of our understanding of it.

Beyond that, I cannot give you any critical date when I expect that we will have the answers to those particular questions.

Mr. Cleary: First, I would like to thank you for your excellent

presentation. Coming from a community where we have a number of industries which use many different types of chemicals, and you have partially answered my question in your presentation, I would like to ask you again: What is the procedure that takes place when a new chemical is to be tested on a trial basis in an industry?

Mr. Millard: We have a notification process in our act that requires that our chief medical officer, that is, the director of our health and safety support services branch, be advised of the introduction of any new chemical or any new substance into the workplace, so that we have prior notification so that we can determine what literature exists with respect to the toxic effects of those chemicals.

The most important thing we have done, of course, is develop on a pan-Canadian basis the workplace hazardous materials information system. The workplace hazardous materials information system will become effective on October 31, 1988, and that requires that every substance which meets those WHMIS requirements--there will be in excess of 100,000 of those substances--will all require a material safety data sheet in the workplace. Every worker will have access to it and know what the toxic impact is and the precautions that should be taken with respect to that substance. Also, every container of that substance will have to be labelled in the workplace. That will become effective on October 31, 1988.

We are just developing our Ontario regulations. This was developed on a pan-Canadian basis with a national consensus of the province, organized labour and the Canadian Manufacturers' Association. We now have to implement that. We passed Bill 79, the Occupational Health and Safety Act, to allow regulations to be developed to implement that. We are presently developing the regulations and we are developing regulations on a tripartite basis involving labour, management and the Ministry of Labour.

Mr. Cleary: That is going to take place in October?

Mr. Millard: October 31, 1988.

Mr. Cleary: At the present time, does a company just bring in a chemical and try it on a test basis?

Mr. Millard: They would have to provide notification to us when they are introducing a new substance into the workplace. I cannot tell you how many of those we have had over the last year. It is something I did not prepare myself on, in terms of notifications for new substances, but I would be quite willing to follow that up if you would like.

Mr. Ruprecht: How many new substances and/or chemicals are being brought on to the market, let us say, every month or every year? Do you have any figures?

Mr. Millard: I cannot tell you that. Certainly, we could access that information through the Canadian Chemical Producers' Association, but I do not have that information.

Mr. Ruprecht: Would it be more than 10, more than 1,000 a year?

Mr. Millard: I would not have any hesitation in saying it is more than 10. There is a substantial number of products brought into the workplace on an annual basis.



Mr. Ruprecht: So it would not be far out to say that over the year--you hear all these figures and I do not know who is right or who is wrong. You hear figures in the neighbourhood of thousands per year. Let us just assume it is a couple of thousand, or just a thousand. That would make your task pretty difficult, would it not?

Mr. Millard: Make the task very difficult? I do not believe that many new substances are introduced into the workplace each year, based on the number of notifications we receive. As I pointed out to Mr. Cleary, I do not have that number of new notifications we receive each year, but I can get that for you.

It is a difficult job, of course. That is why the workplace hazardous materials information system is so important, because every substance in that workplace will have to have a material safety data sheet that tells you about its toxic effect and also what precautions must be taken and every container of that substance in the workplace will have to be labelled as to its contents.

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Mr. Ruprecht: I would be interested to get an idea of how many, because I hear all these different things. Do the workers have a right to know the substances they are working with? Does it automatically follow that once you have that right to know, a substance then is going to be named as a hazardous substance? How does that process work?

Mr. Millard: There are a number of different classifications. Let me say, first, that the workplace hazardous materials information system is colloquially known as the right-to-know legislation, because that is what it provides. It is the right of every worker to know the substances he is working with. It does that.

There are a number of categories of substances under the right-to-know legislation that dictate their being classified as hazardous substances under this system. As I say, in excess of 100,000 substances fall into those categories. There are very few substances in the world that do not have some toxic effect if they are not handled temperately and in a cautious manner.

Mr. Ruprecht: I guess the biggest problem has been that industry has always said to the right-to-know requests which have come from various municipalities--and I am speaking specifically here about the city of Toronto, which probably trailblazed the whole idea of right-to-know legislation to some degree--

Mr. Millard: Community right to know, yes.

Mr. Ruprecht: Yes, community right to know. Do you then think that this right to know will totally slow down the process of new substances being developed? Because the industry's argument here has been that once it provides the worker with the right to know what substances he or she is working with, that will then automatically, I suppose, open up the secrets of that company and the substances being used, whether it is Coca-Cola, polychlorinated biphenyls in transformers or kinds of other substances that may be dangerous.

Do you find that the industry is in a position to block you or the community every step of the way, or do you find that there is enough co-operation that the process--I am thinking about new chemicals and new substances coming on to the market, which are in the thousands, and you may be

handling only a few. I do not know what the ratio is of the new developments, as opposed to the substances being designated as hazardous. Is it actually feasible to work out this kind of system where, on the one hand, you have to protect the secrecy of companies and, on the other hand, you have to produce some way to protect the workers in this kind of environment? That is the balance you are trying to work out, is it not?

Mr. Millard: Those are exactly the sorts of checks and balances that always need to be considered. That is why WHMIS, the workplace hazardous materials information system, is such a model. It is a national consensus. It is a carefully crafted consensus that meets the needs of government regulators, industry and the worker. One of the checks, one of the balances built into it was the creation of a trade secret commission, the Hazardous Materials Information Review Commission, so that application could be made to withhold trade secret information.

Notwithstanding the withholding, if it is approved as a trade secret brand name, the toxic impact of that substance still has to be on that material safety data sheet and the precautions to be taken with respect to that still have to be on the material safety data sheet. A trade secret can be withheld if the trade secret commission approves the withholding of that based on it being a bona fide trade secret. That is one of the checks and balances that had to be built in.

Worker right to know, of course, is an integral part of that, but every worker has the right to know what it is he is working with. There are not many, if any, employers who would disagree that their workers should know what they are working with. The employer community has also agreed in this consensus--and we are developing the regulations for that now--that every worker has the right to be trained in the use of those substances. That will be the part of the package as well as of October 31, 1988.

My ministry and my division are now developing on a tripartite basis with labour and management, through the occupational health and safety education authority and the Ontario Workers Health Centre, a core training package that will be available for the training of all workers in Ontario in the use of hazardous substances. So you cannot just pass the regulation without also looking at the implications of how you implement it. We have worked very carefully on that, and by October 31, 1988, in our program of using labour and management, we will have trained 1,000 trainers to go out and start training workers across the province through whatever community infrastructure exists for training.

Mr. Ruprecht: You have hired how many?

Mr. Millard: We will not have hired any. We will have trained 1,000 trainers, 500 representatives from the management community and 500 from the labour community. We will have trained them to be able to go back to their workplaces, back to community colleges or back to worker centres and train workers in the use of hazardous substances.

Also, in Bill 79, which was the right-to-know legislation passed, there is a community right-to-know provision where the community will be granted the right to know, through the medical officer of health or through the fire department, the substances that exist in a workplace. It was very carefully crafted with the right sets of checks and balances to make it work. I think it is a perfect model for the development of this kind of a regulation.

Mr. Ruprecht: Can I ask one more question, or are you willing to give up--



Mr. Chairman: No, go ahead.

Mr. Ruprecht: I am especially interested in your comment about the community's right to know. We sound as if we know each other when we talk about Mr. Lupusella's riding where there are a number--hundreds, in fact tons--of polychlorinated biphenyls being stored, and I suppose they are being stored in other places as well right across Ontario. What is the process? Does a community have to establish a group to find out what chemicals and what hazards are in a specific workplace or are being stored, whether they are atomic substances as in that riding now, which was my previous riding, or other chemicals or hazardous substances? What other hazardous substances are being stored in the riding?

In other words, what I am asking is, could you quickly give us a rundown on the process of how a community could quickly get access, without being stymied, to information on the dangerous substances that are produced or are stored in the riding or in an area?

Mr. Millard: Existing in the legislation as a result of Bill 79 is the requirement for an inventory of substances to be created and for that inventory to be filed. Quite frankly, I think that needs to be revised in terms of the administrative infrastructure required to handle the inventories from some 200,000 workplaces in the province. I think we will need to look at that. None the less, there is a requirement on the employer to have an inventory and right of access is given to the Ministry of Labour, to the medical officer of health in the community and to the fire department in the community. That is the route of access to that information. There will have to be an inventory and the medical officer of health and/or the fire department and/or the Ministry of Labour can have access to that information.

Mr. Ruprecht: And that is being done when?

Mr. Millard: That is October 31, 1988. It still needs to be regulated. The statute takes effect on October 31, 1988.

Mr. Ruprecht: What is the time limit for providing this?

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Mr. Millard: At this time I cannot tell you all of the process because all of the process is not worked out.

Mr. Ruprecht: My final question then is in terms of the community itself, because the fire department, the police and the medical officer of health are all under the jurisdiction of some political authority which may decide not to provide the information to the community or to a community group, as happens in many cases. What about access by a community organization or community group to this list of hazardous substances?

Mr. Millard: That route of access is not provided at this time in the legislation. There are the three routes of access that are provided for in the legislation.

Mr. Chairman: Would it not be covered under the freedom-of-information legislation?

Mr. Millard: If it were information held by government, it would be, I believe. I am not an expert in the freedom-of-information act, although all

of us are obviously becoming as expert as we can be in its administration. Unless it was information held by government, if there was information held by a company, the act would not prevail in that regard.

Mr. Lupusella: What is the use of all of this information going to the firefighters? They are bombarded by all of this information, the regulations affecting hazardous substances. I heard from a fire chief that in just one industry there were 5,000 chemicals, and here we have the fire department getting all the information about all of those chemicals. Even in case of a fire, what can the firefighters do in relation to all of these chemicals and all of this information? He said the present system is a nightmare, nothing else. How do you respond to that?

Mr. Millard: I respond with a great deal of sympathy. We have met with fire departments. That was my earlier allusion to perhaps the need for revision of the way the statute is crafted at this time, which requires inventories to be submitted from the workplace to these parties, including fire departments.

What the fire departments would very much like to have is the right to access an inventory at the workplace. Essentially, what they are saying is, "Look, if we need that information, and there are times when we very much want that information, let us go to the workplace and access it and have the right to access that information at the workplace."

That is probably quite a reasonable approach to having access to this information because, as I said earlier, the administrative infrastructure to handle that volume of information is huge. In terms of benefit to cost, it stretches my imagination to think it would not be a better system to allow access when access is required, as opposed to having obligatory access where it all floods on to you in a great submission from all of the workplaces in Ontario.

We have met with the fire departments in that regard. The fire departments would very much like to designate a location within the workplace where such inventories would be kept, so that when they have to respond in an emergency situation there is a location they know they can go to and have access to this. That would require more regulation.

Mr. Ruprecht: Mr. Lupusella makes a good point, actually, because in many cases the fire department is being called to a company to douse a chemical fire and it does not know what chemicals are being burned or are in the stage of providing danger.

Mr. Millard: We are working with a number of information agencies. The best of all worlds would be that ultimately there is some electronic access to what substances are in what workplaces and what are the effects of those substances. There are hotlines available to the fire departments at the present time. If they know there is a substance in a workplace or a substance involved in a fire, they can call that hotline and find out what the effects are of that substance and what they should do in terms of an emergency response to treating that fire in that circumstance.

Mr. Ruprecht: It is not a 24-hour hotline. Most fires are in the evening or at night.

Mr. McCague: I would like to congratulate you for the efforts you have made to resolve the problems we are seeing from the various groups and to



design a new system, although it is relatively new. Now that you have this system, what are your critics of the system saying?

Mr. Millard: At the present time there are fewer critics than there are advocates of the system and, quite frankly, this system is sufficiently new that I do not think we have really seen what warts may develop on it. There is a large degree of comfort with the fact that this is a very open, facilitative and participative process where stakeholders actually involve themselves in the development.

At this point, at the risk of perhaps being a Pollyanna, there are not very many critics of the system. There are many more advocates of the system, and nobody has come forward and criticized the system at this point. I am sure once we begin to deal with priorities and deal with different regulatory techniques based on different classifications of substances, we are bound to have disagreements within that committee. It has to happen.

My job, to the extent that it is possible, is trying to facilitate consensus. We have defined consensus as sufficient strength to a body of opinion emerging at that table that nobody feels he has to disagree with the opinion. That was the best definition of consensus we could use, where we have people with different and opposing points of view with respect to regulating in the workplace.

Mr. McCague: I think you said that the system was too slow. Some people were saying that. Who, other than politicians, are saying that?

Mr. Millard: Our organized labour critics were saying that the previous process was much too slow in terms of responding to their needs for greater protection of workers in the workplace. Management, the employer community, was saying that it was far too slow as well and that there are economic and investment decisions that have to be made with respect to technology and they need quicker answers in order to make their investments commensurate with what the legislation is going to be that affects their workplace. They were both critics of the time-consuming nature of the process.

Mr. McCague: You mentioned the volunteer firemen. Thank goodness for volunteer firemen.

Mr. Millard: Absolutely.

Mr. McCague: Most of the volunteer brigades, I presume, as far as I know, are in fairly small communities where there is not a lot of industry. I am not sure, but there probably would be few that would be in communities with more than 10 major industries. That may be a little low. However, I think I know from experience that the volunteer firemen are very anxious to know what it is they are dealing with and they are probably prepared to spend more time than even some of the full-time people in finding out what it is they are dealing with.

Is there not some system that could be worked out whereby the insurance companies would have a right to know what substances the company was dealing with and that information could be passed on to the fire department?

Mr. Millard: The fire department's volunteer and/or regular forest fire departments will have the right to access that information directly under the statute, so the fire departments will have the right to know what substances are in those workplaces as of October 31.

Mr. McCague: It would have more clout if the insurance companies had the right to know also, and probably they do. But if you ran the risk, as a company, of losing out on a claim because you did not tell the insurance company what it was you had in that particular facility, there is a checks and balances system that could be worked out there which would be helpful to the firemen.

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Mr. Millard: Our obligation, of course, and our mandate is for the protection of the workers in those workplaces; if we tried to extend our regulatory authority beyond that, I think we would find ourselves at cross purposes with those who would give us final counsel on our ability to regulate certain matters. I think they would find that outside our mandate, but certainly it may be an approach that would be effective. We felt that giving the firefighters and the fire departments direct access to the information to what was in that workplace would facilitate them being able to do their job in a safer manner.

Mr. McCague: Have you found any occasion when there was a substance there that was not known to the firemen?

Mr. Millard: It will not be enacted until October 31, 1988, so we have not had opportunity to work with it. October 31, 1988, is the date of proclamation. We will find out this Hallowe'en.

Mr. McCague: It may get a few tricks played on you.

Mr. Pollock: I have a supplementary to Mr. McCague's comments. Most of the fire departments in the rural areas are more concerned about what some of these tanker trucks are carrying through their townships than what is in the workplace. It is my understanding that they want stamped right on the side of these trucks what the chemicals are, and some guidelines of what to do and how to fight a fire on a truck on provincial highways or county roads or wherever.

Mr. Millard: In terms of your characterization of what the fire departments want, my information is exactly the same. The workplace hazardous materials information system and the right-to-know legislation does not apply to the transportation of dangerous goods, so it will not have that effect. It applies within the workplace. Both the labelling requirements and the material safety data sheet requirements apply within the workplace, but they do not apply to the transportation of dangerous goods.

Mr. Pollock: Do you personally not agree that it should apply to situations such as that?

Mr. Millard: By virtue of the legislation it is enacted under, we do not have the mandate or the authority to apply it to the transportation of dangerous goods. There is a separate act for the transportation of dangerous goods.

Mr. Chairman: This may make you an advocate for deregulation of the trucking industry, Mr. Pollock.

Mr. Cleary: Just to get back to the fire departments: I do not know whether it is the same all over, but I have had the opportunity to work with four different departments over the past number of years, and they work very



closely with your emergency planning co-ordinator.

I happened to be out at their training programs and there are people on that department--I am not sure whether it is like that all over Ontario, but I know it is in our end--who know exactly what they are walking into in any plant or any storage or anything; at least that is what they tell us. They know how to put it out and they tell you what to expect. This has been going on for a number of years.

Mr. Smith: I listened to this presentation and the debate back and forth, and it sounds like we have a tremendous number of new chemicals being produced every year. Yet in agriculture we hear that--I am not sure whether it is by the year 2000--they hope to have cut the use of chemicals by something like 50 per cent. Do you believe that is a fact, from where you are coming in your department, or is that just a myth that somebody is talking about right at the moment?

Mr. Millard: The Occupational Health and Safety Act, of course, does not apply to the agricultural community; there is a separate Pesticides Act which speaks to those kinds of substances. I do not believe our experience or our observation has been that there is that kind of a diminution and decrease in the use of substances in the workplaces we deal in. We have not observed that. There has not been that kind of decrease.

From the agricultural point of view, having some personal experience as opposed to any work experience with agriculture, my observation that a number of agriculturalists are looking for more economical ways to do their business and the extent to which they can decrease the use of costly chemicals to do that job. I think they are continuing to look for that and I think there is a growing environmental awareness in the agricultural community as well with respect to the impact of substances on its environment. I do not dispute it in the agricultural community. In the workplaces that we observe, we have not seen that decrease in the number of substances being used. There is a reasonably steady use of a large number of substances in our workplaces.

Mr. Chairman: Mrs. Stoner. I am mindful of the time because I have at least a couple of questions related to the process and I think Mr. Dekany does.

Mrs. Stoner: OK. In a recent case in Pickering, Purolator Courier was carrying a hazardous material that was then released within the Purolator building, which caused an employee of the company to decide to have an abortion. Where does that hazardous material fall? Purolator is a transportation company, yet in fact the material was not being transported on the highways or the rail systems of Canada. It was in the workplace. Does that fall between the cracks? Is there any regulation that applies?

Mr. Millard: No, it does not fall between the cracks. Without my doing a bureaucratic shuffle, it falls under the federal labour legislation, and the federal Department of Labour was involved. They have an inspectorate for those workplaces that fall under federal jurisdiction. They were aware of that situation and acted on that situation in the Purolator instance. Because of the kind of company it is, it fell under federal jurisdiction.

Mr. Chairman: I have some questions with respect to the new process you have now, which has replaced something akin to the reform that they have now in Ottawa, where they give notice through the Canada Gazette of everything that is taking place on an annual basis and then again on a specific proposal

basis. That is the process that the parties and the Ministry of Labour all moved away from. I am wondering whether you have retained any elements of that. It is not very clear from the comments you made whether you have retained the prepublication process and that sort of thing.

Mr. Millard: Yes, we have. On page 3, the preparation of the draft regulation for comment, first of all, there is a published intent to regulate. There is a 90-day period for public review of the draft regulation following that. Then there are public hearings, under the public meetings slot. There is a 30-day period following that for submission of further comment and a process after that to review the comments. We have kept a very similar time frame in terms of the consultation process that we have adopted.

Mr. Chairman: Is the 90-day process consistent with section 22b?

Mr. Millard: Yes, and we have extended the time period.

Mr. Chairman: OK, I understand. When you have the public meetings, whom do you give notices to?

Mr. Millard: In my earlier discussion of trying to identify who your stakeholders and clients are, we will--

Mr. Chairman: You are saying it is an ad hoc process?

Mr. Millard: No, not entirely. It is an ad hoc process because there is no prescription, at this time, of who will be notified and how. In that respect it is ad hoc. Each of the steering committee representatives, labour and management, will be responsible for advising his constituency of public meetings. We decided in the committee that we will publish in whatever medium is the most effective the intent to have public hearings.

We also have a registry of joint health and safety committees in establishments across the province, and we use that mailing list as groups that are notified as well. If we are aware that a substance is being used in X workplaces, we can send the notice of the public hearing to those health and safety committees, which are labour-management, in those workplaces, but it is an ad hoc process.

Mr. Chairman: Who makes the determination between a major change, which would then generate further public comment, and a minor change, which would circumvent further public comment?

Mr. Millard: That would be the product of the joint steering committee.

Mr. Chairman: Is there some standardized approach, or is that again an ad hoc determination?

Mr. Millard: The committee is still wrestling with that. In fact, at our last meeting, which was just last week, we felt that we needed to determine and publish our criteria for major and minor change.

Mr. Chairman: When you say "publish," publish it where and give it to whom?

Mr. Millard: We publish those in the minutes of our meetings. Those are distributed through the labour-management committee, and it is responsible



for networking with its constituencies.

Mr. Chairman: In the case of this whole scheme of participation, consultation and decision-making, I take it that it has some prospect of working because you have, more or less, two sides, with subsets within each side, that are capable of articulating and presenting evidence to buttress a position, as well as having a serious enough economic and social position to have an interest in taking the time to conduct the process through. In other words, it is worth the fight for them because there is a lot at stake.

Mr. Millard: That is our expectation.

Mr. Chairman: Right. That is at least the theoretical model that you are working from.

In the context of, say, consumer legislation, where you have an industry in which the operators have a certain interest, and then you have a broad mass of consumers who, generally speaking, do not have a large economic interest at a given point in time that would justify their participating in the process, although there may be a tremendous number of consumers affected by a regulatory process--almost any commercial retail operation would have that kind of a problem, whether you talk about selling cars, houses or anything else. All those industries have a stake in the regulations, but most consumers are not going to get involved. How do you set up a consultative process that is equitable to all of the interests there?

Mr. Millard: Let me say first that I very much expect that the process we are using is one that is designed to meet our particular needs. We do have identifiable clients and stakeholders here. That was one of the premises that I used earlier. In terms of organized labour and an employer community, we can identify them and bring them to a table.

I guess if I relate to my earlier experience in the public service when I worked in the Ministry of Natural Resources, it is sometimes very difficult to identify a single representative or a single body of representatives for some of the larger client groups. For instance, if you were dealing with provincial parks regulations or fisheries regulations, how would you bring those people to the table in a consultative and participative mode?

Mr. Chairman: How do you give notice to them?

Mr. Millard: Exactly. I think we need to try, when we can, to see whether there are affiliations or associations that do represent those people. Often, there are representative associations or affiliations that can bring forward a point of view that reflects a broader part of the society, and that position then can be articulated by that advocacy group or that association that represents a broader society. I think we need to try to do that.

If we were trying to tailor this process to a consumer protection type of regulation, then I think we would have to look for groups or affiliations or associations that do, in fact, represent consumers. And of course, what you have to make absolutely sure of is that the association that purports to represent a larger constituency does, in fact, represent a larger constituency.

Mr. Chairman: I take it then that even though you have a participatory process, the pre-publication obligation has not presented any kind of a difficulty?

Mr. Millard: No, I do not think it does. I think it needs to be a part of the system. I do not think that it should ever simply suffice for and substitute for a consultative process. I would add, if I may, that I do not think it should be built on top of an already good consultative process. If there is a good consultative process in place that accommodates and includes notification periods and so on, do you need to then rebuild that into the legislation on top of an existing process? I reference the federal process in that, having had experience with trying to develop regulations which would suit the provincial needs, yet were pursuant to federal legislation, as is the case with fisheries in Ontario. The process can add up to 18 months of time to the simple regulation-making required to change a fishing season. So it can become burdensome in terms of its consumption of time.

Mr. Chairman: Would there be any difficulty for instance in having the Ministry of Labour publish an annual prediction of what they anticipate they will deal with in the federal model?

Mr. Millard: Not having faced that, I anticipate that in fact could be a large problem. I can anticipate that information would come to be known with respect to a substance in a workplace or a type of procedure that was taking place in the workplace that needed to be corrected quickly. What would be--I will ask a question in response to the question, if I may--the implication of not having pre-published at the beginning of the year your intent to do that? Would you be constrained by that intent or is it simply an intent? And if there is room for diversion from that, when and as required or prescribed?

Mr. Chairman: No. It is simply an intent under the Ottawa system and that was my assumption and my question.

Mr. Millard: Certainly, I would hope that as it relates to hazardous substances that we will be able to do exactly that. We do intend to try to do that because we are building a work plan right now for dealing with it.

Mr. Dekany: A question that the chairman asked previously, and I am not clear on the answer. Under section 22a of the Occupational Health and Safety Act, there is a requirement for publishing a copy of the proposed regulation in The Ontario Gazette. Looking at your flowchart on page three of your brief which sets out the present process, can you identify for me where the publication of the proposed regulation takes place?

Mr. Millard: Not section 22a but section 22b? I am sorry.

Mr. Dekany: That is correct, section 22b.

Mr. Millard: Section 22b.

Mr. Chairman: The reply that you gave to me suggested that in the category where it says, "Prepare draft regulations for comment after JSC approval." And then there is a 90-day gap. You said that that was a 60-day gap, only you extended it by 30 days.

Mr. Millard: I am sorry, that really was what I intended to say, and I apologize. That really is section 22a in my estimation. Section 22b, I have to admit that in this process, we will have to build it in with the "Recommend the final Draft Regulation to the Minister." At that point, there will have to be some notification to accommodate the 60-day period. So my answer is it is not built into this.



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Mr. Dekany: In the Ottawa system, as I understand it, the proposed regulation that is prepublished, and also the final regulation that is published, is accompanied by a regulatory impact assessment statement that sets out the description of the regulation, the consultations that have taken place, the anticipated impact on the public and any compliance mechanisms. In your view, would publication of a similar statement with either draft regulations or the actual regulations serve any public use?

Mr. Millard: Ordinarily, those are the items that are of the greatest concern during the consultation period. Those are the items that you deal with and that you consult most extensively about. As to whether an end-of-the-process notification of how those had been resolved would help, certainly it is a part of the process in terms of the consultation and participation. To recount those, I do not think would create a burden, but as to whether it would create any benefit at that point, I would be speculating as I have not had experience with it.

Mr. Dekany: Would it not create a benefit, for example, to certain groups that do not have organized representation such as unorganized labour?

Mr. Millard: I think the more any of us in the public service can do to explain the rationale for policies, decisions or regulations, whatever they may be, that have an impact, and they all have an impact, the much greater the expectation that those policies, regulations, etc. will be accepted and used.

Mr. Dekany: Do you publish notices of proposed regulations or notices of intention to designate substances voluntarily in publications other than the Ontario Gazette, such as the Globe and Mail or other newspapers?

Mr. Millard: We have used other mechanisms, mailings to the joint health and safety committees, for instance; we have used that extensively. I do not recall having used the newspaper approach. Certainly, with respect to public meetings, we have, but in terms of intent to regulate, I think we have used our mailing lists and the Gazette. Then we ask trade associations and safety associations, for instance, to put that into their communications vehicles. Let me say that I have only been associated with this business since July of last year, but I am not aware that we have used the newspapers or electronic media for that kind of notification.

Mr. Chairman: Mr. Millard, I want to thank you very much for an excellent presentation. You certainly answered a wide range of questions to assist the members of this committee. On their behalf and on behalf of myself, I want to thank you for your time here.

Mr. Millard: Thank you very much, Mr. Chairman and members. It has been my pleasure. I will follow up with Mr. Cleary and Mr. Ruprecht regarding the number of new notifications for substances that we receive each year.

Mr. Chairman: The next witness who is scheduled is Dr. John Hewings from the air resources branch of the Ministry of the Environment.

Mr. Piché: Good morning. I am Ed Piché, director of the branch. This is Dr. John Hewings, supervisor of regulation development and environmental assessment.

Mr. Chairman: I am glad to see you both, gentlemen. As you are

getting set up here, I can indicate to you that the procedure we have been using is to allow you to make a presentation to cover whatever points you think are most important. After that, I am sure there will be members who will have all sorts of questions for you.

Mr. Piché: We have a slide presentation. If we can set it up quickly, we will do it. Otherwise, we will proceed without it.

Mr. Chairman: That is fine.

Interjection: We are trying to find a slide projector.

Mr. Chairman: I understand we are awaiting the projector. Perhaps you can make your presentation. Whenever it arrives and is ready to go, we will stop and turn to it.

Dr. Hewings: Perhaps in light of the fact that we do not have the slide projector, we can forget the slide show and I will just circulate copies of the slides to you and we can run through them that way. They are basically the same. I reproduced them just in case this sort of thing happened.

Mr. Chairman: You can just slide right on into your presentation.

#### MINISTRY OF THE ENVIRONMENT

Dr. Hewings: The review of regulation 308, which is what we are here to discuss today, started as part of a much larger review of the whole of the air management program, which was initiated in 1983.

If you look at the first page of your copy, you will see there the structure of the review program. Basically, we set out to examine the various items of that program. You see those halfway down the page: the history and philosophy of air management in the province; legislative review and development; design and approvals, the way in which we approve facilities; source testing and control of air contaminants; ambient air monitoring of contaminants; and research needs.

As a result of this review, it was identified that the legislative review and development area was the area that required most urgent attention. You will see that we have listed the acts under which our legislation is operated: the Environmental Protection Act, the Environmental Assessment Act and the Pesticides Act. In addition, we have a number of regulations and the major ones are listed on the other side of that, regulations 295, 296, 297 and 308.

In order to effectively undertake a review of the legislation and the regulations, we divided the work into a number of work groups, seven in number. You see they are numbered from one to seven. Basically, these working groups looked at the co-ordination aspects of the existing regulations, the air pollution index, the equations which are contained in the regulation, aspects of long-term transport and deposition, phytotoxicology, which is damage to plants, opacity--black smoke--and our incineration policy.

The way in which this was organized was that committee representatives were sought from various branches within the ministry. Some met on only one occasion because they decided that the material they had to look at warranted only one meeting. Others met on several occasions over a whole year before they were able to come up with their final reports. As I said, this process



was entirely internal.

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Following this internal review, we decided it would be appropriate to seek a wider indication of where we should be going in terms of our changes to the regulation. To do this, we held a workshop in November 1985, a two-day workshop. We invited approximately 120 people selected by us as being representative of the full range of interests or the stakeholders that we could identify. These came from industries and industry groups, nongovernmental organizations such as Pollution Probe, the Canadian Environmental Law Association, the various professionals in the field, lawyers, doctors, engineers, consultants and the mathematical modelling group, universities and various other smaller interest groups.

The workshop consisted of a speech given by the minister and then formal presentations on the findings of the internal working groups. We were, in effect, providing information to people as to what we were doing. In order that they could attempt to understand a little more clearly what we were talking about, we also produced a document, which I have here--I only have one copy, unfortunately--which was background material. They were supplied with this two weeks before the workshop.

Mr. Chairman: That looks like a very thick booklet.

Dr. Hewings: Yes, it is a fairly substantial book. A lot of the professionals, however, would be familiar with much of the material contained in here. In this group, we were faced with a group of people of very wide understanding of the problem. Some of the people are working daily with the kinds of issues we were looking at; others are looking at it very tangentially. We thought, therefore, we had to produce a fairly comprehensive document so that we could assume a base level of understanding of what we were talking about.

We made formal presentations based on the contents of this book, on the various aspects covered by the working groups. This took up the first day of the workshop. On the second day, we split the workshop into groups to examine the various aspects in a discussion type of format. We attempted to make the groups cross-sectional of the various interests involved. We ensured there was not a disproportionate number, say, of nongovernmental organizations in any particular group.

We also made available the various ministry experts in the areas of discussion and we recorded the proceedings; not verbatim; we recorded them using a secretary who identified the major concerns.

We then held two plenary sessions after the various workshop groups, at which we tried to pull together the discussions of the concurrent working groups. These we published subsequently in proceedings of the workshop in March 1985. Would you like me to circulate these around?

Mr. Chairman: If you have enough copies.

Dr. Hewings: No, I have just the one copy, unfortunately.

Mr. Chairman: I think members would like to take a look.

Dr. Hewings: As I indicated, we published the proceedings of the

workshop. We also published a summary of comments we received back from various groups, not publishing them verbatim, but trying to extract from them the major areas that were identified as worthy of comment by the organizations.

Coming out of the initial workshop there was some concern about the modelling aspects of the regulation.

Mr. Chairman: What do you mean by the modelling aspects?

Dr. Hewings: I was going to explain. Regulation 308 contains, in the appendix, a set of calculations. These calculations are used to predict what the concentration of a contaminant will be on the basis of what we know about the characteristics of the stack that is being proposed, the stack and the emissions from that stack, so we can estimate what the likely ground-level concentration will be and we can compare that to our standards.

Mr. Chairman: What is that, computerized modelling?

Dr. Hewings: Technically, it can be done without a computer, but in reality, yes, it is a computerized modelling system.

Mr. Chairman: Would the participants have access to the development of the programs for the computers or is that the kind of expertise that exists solely within the ministry?

Dr. Hewings: Oh, no, it exists outside. They were talking initially about what we have currently in the regulation and what we were proposing. What we are proposing is considerably more sophisticated than what is in the regulation at present. Therein lies the problem in that a lot of people will have to consider this as a black box. It is simply too difficult for people who do not work within the field to understand the exact workings of the equations.

Mr. Chairman: That is why I asked if they had access to that information.

Dr. Hewings: They have access to it.

Mr. Chairman: But they will not understand what it is they are looking at.

Dr. Hewings: Understanding it will be a problem. That is something we are encountering. That is one of the reasons why this second workshop was held. Even for the professionals within the area, there was a requirement for them to get more knowledge of how the system that was being proposed would work and what the peculiar aspects of it would be, the particular aspects of it would be.

The invitees to this second workshop were, essentially, a subset of the invitees from the first workshop; however, other people, if they requested to be in attendance, were permitted to do so. We did advertise through Eco/Log Week that the conference was being held and that if people wished to come, they should contact us.

Basically, we undertook a series of presentations to try to explain in more detail what the proposals were containing and then we held roundtable discussions on various aspects of the proposals. We also put out a set of proceedings from this conference. This set of proceedings is reproduced in a



subsequent document, which is why I have not brought it with me.

Following this workshop, we started work on the discussion paper, which is the stage we are at now. This discussion paper was circulated, I believe, among members of the Legislature when it was tabled. I am not certain whether it was circulated together with the appendices, which are the backup documents to some of the proposals.

Basically, we have a set of documents, appendix H, which summarizes the modelling and covers the discussions that took place at that workshop and some other developments. Then we have other volumes, A to G, which cover other detailed aspects. I do not think it is necessary for me to outline what they are. People can examine them at will.

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From October 1986 to October 1987, we were involved in the production of these documents. The aim was to take the various inputs we had obtained at the workshops and in correspondence and turn them into a comprehensive set of proposals. In this set of proposals, we wished to identify the needs, the lacks and the requirements associated with the present legislation. We wanted it to provide a set of alternative solutions, items people could discuss with us. We wanted it to supply subject matter for further discussion and to identify detailed implementation of the proposals. As I indicated, we also wanted it to contain a comprehensive set of background documents. Ministry approval for publication of these documents was obtained in October 1987 and the documents themselves were issued in November 1987.

In connection with the documents, a communications plan was evolved. This communications plan consisted of setting out mailing lists, an advertising program, a commitment to, as you are aware, the publication of French and English versions and the design of a logo and a name for the program.

The mailing lists we assembled from various lists kept within the ministry. Being the air resources branch, we had accumulated our own list over the period when the review was being undertaken. We also added lists from other sources within the ministry. There was an exercise designed to look at waste management, the blueprint exercise. That produced a very large mailing list. Also, we had a mailing list associated with polychlorinated biphenyl destruction facilities. We assembled an aggregate mailing list from these sources.

We sent copies of the documents, together with our proposals for advertising what we are doing in the program--I will talk about that later--in the packages. We also advertised in approximately 90 newspapers in the province, including 20 in French. The notices indicated that the ministry had produced this program and was going to be holding public sessions in various locations in the areas the newspapers were serving. We also placed notices in trade journals, such as the Air Pollution Control Association bulletin and Eco/Log Week.

As some of you are aware, the minister also made a statement in the Legislature and at the technology transfer conference, a conference held in Toronto annually which has professionals from the field present.

The logo of the program, which is contained in here--this is the French version--contains a diagram with clouds and also the sort of clean air

program. This was designed by a professional consultant. It was designed in order to give the program some separate recognition, so that we could attempt to conduct a discussion program on the basis of it.

In order to expose the ideas to a much wider audience, we have during the last three months been holding a number of meetings. I am going to divide these up into the public meetings and the meetings we held with the various specific interest groups, because they are very different.

In order to undertake a public consultation, originally we planned to hold meetings in 20 locations. We ultimately held them in 20 locations but on 23 occasions, because we went back to three cities. Basically, we held an open house format in the afternoon, at which people were able to talk with ministry officials on a one-to-one basis, and we had display boards, which were also designed by a professional consultant. Then in the evening we held a more formal session, in which we had a 40-minute slide show which identified the reasons for the review and attempted to summarize the major proposals.

Then we discussed some of the specific aspects of the program. We were aiming at this stage to hold the level of content to something the public could understand. Unfortunately, we found that what happened was that the audience tended to be somewhat professional in its content. This caused us some problems in this area, where we were attempting to discuss the details of the proposals. Obviously, the professionals involved wanted more detail than the general public could necessarily accommodate. Following the presentations, we held a question period which lasted anywhere from one to two hours.

Typically at these meetings, there were six or seven ministry staff available, including the specialists in the areas involved in the program, regional representatives to answer specific questions about local areas and a secretary who was recording the proceedings in much the same way as we had recorded proceedings previously in order to get the flavour of what the meetings were saying.

In order to discuss our proposals with industrial associations and other arms of government, we have been holding another series of meetings. Currently, we have held eight meetings. I am sorry, it says seven on the slide; in fact, we have held eight. I had forgotten one of them. We have another six meetings planned.

The format of these meetings is somewhat different from the public meeting. We give a detailed overview of the proposals on overheads and then we discuss the specifics of various areas, the contaminant classification system which we are proposing, the details about how we will evaluate technology and, again, the modelling aspects of the proposals. A question period was also attached to these presentations.

In order to update the people who attended our workshop but who had not necessarily been involved in either the public presentations or the presentations to industry groups, we held a further workshop in March of this year. This was attended by approximately 66 people representing principally industry, but we had several nongovernmental organizations and academics present. The format was very similar to that used for the industrial associations in terms of the initial presentation, but we then split the group into concurrent working groups and discussed four specific topics with the respective experts present. We were able to carry on a dialogue and ask and answer questions in this format.



We recorded the questions that were asked and the answers that were given. We anticipate we will be able to produce some form of the proceedings, which we will then be able to circulate to the people who attended the various sessions and are on our mailing list.

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We are currently undertaking an economic assessment of our proposals. This is being done by outside consultants. We will be assembling the various comments which we are receiving and which we anticipate we will receive on the position paper. There is a possibility we will hold further sessions, such as the workshops, to keep people up to date with what we are presenting. Then we will be producing a draft regulation which we are going to be circulating for public comment.

I should mention that there was a comment period of 90 days which was originally attached to the documents. This was extended to 120 days as a result of requests to the minister. On the draft regulation we are currently contemplating that there will be a 45-day comment period.

Thank you. I think that summarizes it well enough.

Mr. Chairman: I am going to take the prerogative of asking a few questions about the process. There is now another series of papers, I guess, setting out the dates that are involved or the media coverage.

Dr. Hewings: This merely attempts to summarize how many people attended the various meetings and where the meetings have been held. I should point out, as you have probably noticed, that the attendance at the meetings was somewhat disappointing, but we will answer questions on that. We have some ideas as to why that may be the case.

Mr. Chairman: I have a list of at least four speakers, but I would like a few questions first, just on process, because I have a feeling people are going to go on to specific points in some cases.

The process that you are still in the middle of is quite different from the traditional governmental approach to regulation. My first question is whether you can tell us what the additional cost is for doing what you are doing in dollar terms and in terms of the extra time it takes.

Second, how do you make the analysis of whether the money you are spending on all of this consultation produces a net benefit by producing a better quality of regulation?

Mr. Piché: OK. First, in terms of cost, I think I will attempt to address that. There has not been a conscious effort from the beginning to examine the extra cost incurred by this approach as opposed to, say, the more traditional approach. The government has deemed that this is a requirement, however, so I do not have what I would call a precise dollars-and-cents figure at this minute, but I can give you, I think, a reasonable estimate.

Before I do that, I would like to say, as a personal opinion, that one of the advantages of a very complex piece of regulatory machinery, as this currently is, does require at the very least consultation with the technical community. That part of it would be eliminated from this extra cost. In other words, in my opinion and in the opinion of my colleagues, we would have to canvass a very broad technical community before we would go forward. The

additional cost we are talking about would be summarized, for the most part, by these meetings that are so-called public meetings.

I think advertising was roughly \$100,000, or in that range. I would take that figure, in terms of adding on the individuals involved, and say that a rough, first-order guess would be \$250,000 for that component of the additional cost solely attributed to the public consultation process. I am not looking at the extra cost of the time required, the fact that there is the dimension of time. We do not know how long that will be at the moment. I am looking solely at advertisements and the cost of staff, the logistics for the public consultation, that is, the broader public. Would you disagree?

Dr. Hewings: No. I thought the number for the advertisements was lower than that, but you have more recent access to them.

Mr. Piché: Yes. There was a second part of your question. Perhaps you would just remind my memory.

Mr. Chairman: How do you analyse whether that \$250,000 was well spent?

Mr. Piché: I think that is perhaps not a fair question to address. As I said, the executive of the government sees this as a requirement of the process we are in.

Mr. Chairman: Did you get a better regulation out of it?

Mr. Piché: We do not have the regulation yet. We are in the middle of the process. In our own personal opinion, if a larger segment of society more fully understands the document, I think we as a society, collectively, benefit. Do we need the feedback from the public at large generally speaking? I think a quick response would be no, although occasionally the public we have been dealing with has in many instances been a very biased public in the sense that it is very informed. Many of them have expertise relevant to the process, to the technical propositions, if you will, in the regulation and have asked good questions.

For the most part--again, Dr. Hewings, interrupt me if you wish--the professional groups we consulted have addressed, as far as I can recall, the broad spectrum of questions.

The importance of the broader consultation is simply that you have a more informed society, and the better informed the society is, the more vigilant it will be. Let us face it. If you know the rules, you are more vigilant. If you are vigilant, that adds to the protection of the ambient air, which is the mandate of the ministry and our direct responsibility as air resources people.

Mr. Chairman: I guess the concern is whether you have a process to try to evaluate if the way you have done it is the way that optimizes the informing of the public. I guess there is a corollary question. Do you plan to review that to try to figure out whether you spent the money, your time and other resources wisely, what parts worked out, what parts may need to be replaced or whatever?

Mr. Piché: That kind of introspective analysis would not fall traditionally within the mandate of the air resources branch. However, as mentioned earlier by Dr. Hewings, the ministry has started a so-called



socioeconomic impact assessment of this initiative that includes a critical assessment of what we would call the administrative dimension of it. That review would for the most part, in my opinion, encompass most of the question you have addressed.

However, as part of that initiative, we are certainly not looking at a whole spectrum of options as to what the best approach might be. There are a number of initiatives within the Ministry of the Environment, going back some years, starting with the waste blueprint, including 309, including the municipal-industrial strategy for abatement, all going forward in parallel, taking slightly different approaches. I guess that question would have to be addressed to other colleagues as to whether there is concerted, integrated effort to look at the cost-benefit aspect of it.

I summarize by stating our mandate. We are a technical service branch. We are not professional communicators and we do not look at the cost-benefit dimension of communication. We consult people as to the best way to get the message out and then we do our best to communicate the message.

Dr. Hewings: There is one aspect of this which you have not covered; that is, the media do cover these kinds of meetings, not as well as we might hope, but in all locations we were present at, the media were there. There were reports carried in the press. I think this is where the process does have considerable merit. You are taking the program into the local community. You are trying to relate it to local problems. As many of you are aware, it is in this local problem area that a lot of the reaction to air pollution and environmental problems is shown.

The not-in-my-backyard syndrome is very strong and people can relate to something in their neighbourhood. They have great difficulty relating to a set of legislative proposals which are going to affect what happens in their backyard, but I think if there is a wider understanding that this legislation exists and how it might impact on their specific problem, the process is indeed worthwhile.

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Mr. Chairman: Given the extent of consultation that is under way, and presumably will result in a regulation, is there any technical reason why something of this magnitude would not be a piece of legislation as opposed to a regulation? I say "technical" in the context of your respective professional backgrounds, not a legal technical question.

Mr. Piché: I might have to reflect on that for a little, but I cannot immediately think of any reason why.

Mr. Chairman: I have the list of speakers: Mrs. Stoner, Mr. Lupusella, Mr. Pollock, Mr. Ruprecht.

Mrs. Stoner: We have dealt with my first question, which was on the poor turnout. I have a couple of specific ones, which I think David expected to hear this night.

As I read your document, Air Pollution - General Regulation Workshop, November 1985, just going through that, there seemed to be no recommendation from working group 7 on incineration. Could you expand a little on that? Is that the existing situation?

Mr. Piché: OK. You are going back a bit before my time here.

Dr. Hewings: It is actually going back before my involvement in this too. This was an area where there was an overlap internally with the waste management branch of the Ministry of the Environment, and the real reason for looking at it at that time was to try to identify which branch had the major role to play in the area. A lot of these facilities are waste management facilities.

Mr. Piché: Since that time, we have an agreement internally that the waste management branch would use us as a consulting group. As you are probably aware, incineration is a major issue, both in Ontario and certainly with respect to sister states. The agreement, with respect to dealing with waste, is that we would be consulted from the air aspect by our waste management colleagues. They take the lead and they use our expertise as appropriate.

At that particular time, I think there was some jockeying as to who would have responsibility because the waste management branch had not existed too long. Was that 1985, John?

Dr. Hewings: Yes.

Mr. Piché: OK. So there was some sort of, "Who is going to take the lead?" It would have traditionally been the air resources branch, but since there was a waste management branch created, it was felt it should have the opportunity to assume responsibility for waste issues.

Dr. Hewings: There are also separate hearings required under the Environmental Protection Act for waste management sites, separate from the process of providing a certificate of approval to construct an air emission source. There is a two-part process going on, and I think that was also involved in this.

Mrs. Stoner: The other question I had dealt with whether or not--I could not tell from the documents that we saw--you looked at vehicular emissions.

Dr. Hewings: No. At the present time, vehicular emissions fall under another regulation and it is a separate initiative. That does not mean we are not doing anything.

Mr. Piché: No. We are. These are point sources, stationary sources, if you will. Vehicular emissions come under a separate regulatory machinery because they are moving, and also they are fairly complicated because there is the federal responsibility also.

Mrs. Stoner: Is it totally federal?

Mr. Piché: It is federal regulation with provincial enforcement, which makes for an interesting marriage.,

Mrs. Stoner: Is it effective?

Mr. Piché: I think the air quality in southern Ontario is second to none, so if you judge it on that, it is effective. Could it be better? That is another question.



Mr. Lupusella: Considering that your ministry is departing from the original role of drafting legislation by adding a new feature, which is the consultative process, which may not be existing in other ministries, is this a new process or for how long has it been in existence?

Mr. Piché: I would not say it is a new process. It goes back, if you will recall. There was very extensive public consultation in the waste management blueprint. There are some facets of it perhaps that are new in terms of the number of programs that involve extensive public consultation, if you will, but certainly there have been precedents in the history of the ministry.

Dr. Hewings: I just wanted to add that I was personally involved in another initiative of a very similar nature, which was looking at proposed legislation for mobile polychlorinated biphenyl incinerators.

Mr. Lupusella: I remember.

Dr. Hewings: We went around the province. We gave talks to local councils and explained what the impact of our proposed regulation in that case would be on the local area, so it was a very similar kind of initiative.

Mr. Lupusella: In your presentation, you mentioned participation of working groups, but you did not make any particular reference to participation of municipalities, for example. Are they participating? Do they have an impact on these working groups?

Dr. Hewings: There were some representatives of the municipal level of government present during the working groups. I confess that the involvement of the municipal level of government has not been as great as that of either the federal government or other aspects of the provincial government. This is partly a reflection of the interests of those other levels of government, but your point is well taken because municipalities have a lot of major sources of air contaminants and sources that are going to be affected by this legislation. The city of Toronto was represented at our meetings.

Mr. Lupusella: The other question is, on the green paper I read that the first regulation was drafted was by the municipality of Toronto in 1907. Do they have the authority to draft regulations or today are we talking about bylaws?

Mr. Piché: I think it is talking about the history of where we evolved from, whatever it was then, a corporation of the Ministry of the Environment, 1972 or 1973, somewhere around there. It was amalgamated with the Ontario Water Resources Commission, and up to that time I believe it had been something like the Metropolitan Toronto Air--whatever it was called.

Dr. Hewings: The original legislation permitted local authorities to set up units to deal with air pollution. Only three municipalities did so, and as a result of the poor participation of local authorities, the province took over the responsibility entirely, and the local initiatives in the city of Toronto and Brampton--there is one other which I cannot remember--were incorporated into the provincial network.

Mr. Piché: That is historical.

Mr. Lupusella: So they have no authority whatsoever today, but do they have authority to enact bylaws in relation to environmental problems like noise pollution?

Mr. Piché: Yes, but again producing it, if you will, by our regulatory authority. They certainly do not have the wherewithal to overrule any of our regulations. For example, if we set an ambient air standard for sulphur dioxide, Metropolitan Toronto or any other municipal authority cannot break that rule, if you will, or break that law.

Mr. Lupusella: That is the point I was trying to make and to understand, so they are bound provincially.

Mr. Piché: Yes, absolutely.

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Mr. Pollock: You are involved, of course, with the air resources branch and that is basically concerned with air pollution. Is there any other branch of the Ministry of the Environment that is involved with, say, pollution of the underground water sources?

Mr. Piché: The water resources branch. That is the same division. There are three service branches within our division: water, waste and air. There is another branch called laboratory services branch, which provides analytical support for those three service branches. All surface ground water problems are dealt with by the water resources branch.

Mr. Pollock: There seems to be a major concern in the rural areas about landfill sites where you can put your garbage in a landfill site and it will run directly into the lakes and the streams and all that sort of thing. That is supposed to be better than actually burning it and letting it fall into the lakes and the streams. I have not figured that one out. Do you want to comment on that?

Mr. Piché: I guess all we would say is that with state-of-the-art engineering design, state-of-the-art control of air emissions and maintenance, as technical people--speaking for myself, anyway--I would feel reasonably comfortable with that as a way of dealing with garbage. The problem is to get facilities sited and to ensure that they are state-of-the-art designed, state-of-the-art controlled and state-of-the-art maintained. In other words, professionally--speaking for myself now--I see incineration as a reasonable alternative, reasonable in the sense that it should be considered and it should be discussed.

Mr. Pollock: You see that in it, but I can assure you there are a lot of people who do not.

Mr. Piché: That is why I qualified that by saying I gave the advice on a professional basis.

Mr. Pollock: The ministry does not seem to be seeing things in that respect.

Dr. Hewings: One of the aspects of our proposal does, in fact, look at the way in which contaminants can move from one area of the environment to the other.

Mr. Piché: One medium to another.

Dr. Hewings: One medium to another. Contaminants which are likely to do that are rated as being more serious problems than ones that do not. We are attempting to deal with that aspect in our proposal.



Mr. Pollock: I do not mean to play down in any way the fact that we have a problem with acid rain. However, coming from a rural area and having been in farming for many years, I have never seen the major impact of acid rain, say, on crops, but I can tell you that if my underground water supply gets contaminated, I have a real problem.

Mr. Piché: I do not know how far you want to wander into technical reasons for that, but there are very good and sound technical reasons why that is. That you have not personally seen sulphate or nitrite problems in a rural community, especially a farming community, is primarily because of your land practices.

Ozone, by the way, which is long-range transported, does have adverse and significant adverse economic impact in southwestern Ontario. That is kind of within the realm of the LRTAP--long-range transport of airborne pollutants--problem, loosely called acid rain. There is a significant amount of damage on an annual basis to the farming community in southern Ontario from ozone.

Mr. Pollock: Can you prove that?

Mr. Piché: Sure.

Mr. Pollock: How can you prove that sort of thing?

Mr. Piché: We have studies published in the public domain as to the extent of that damage.

Mr. Pollock: It could well be.

Mr. Piché: I say it is significant, but when you look at the total value of the crops, it is not. Let us face it, I think agriculture is the number one industry in terms of the economy in Ontario. It is very close anyway. It is very, very significant. If you look at the total value vis-à-vis this damage, it may not be significant, but when you are talking in the order of \$20 million, I think that is something to be cognizant of.

Mr. Pollock: I am certainly concerned about acid rain and, as you say, if there has been damage, and I have to rely on your expertise to clarify whether the ozone layer is being hurt and all those sorts of things.

Mr. Piché: Excuse me. This is very confusing to the public. The ozone layer and ground level ozone are two different problems. It is the curious situation where you want ozone way up high, but you do not want it at the ground. At the ground, it causes damage. Up high, it prevents us from being cooked.

Mr. Ruprecht: Is there a connection?

Mr. Piché: Obviously the stuff on the ground eventually percolates up, yes, so one has to be very careful. I do not want to compare the importance of ozone versus ground water. I firmly believe that ground water is a treasured resource.

Mr. Pollock: So do I.

Mr. Piché: We should be doing everything we can to protect it.

Mr. Pollock: One last question. Did you ever meet with the Ontario Federation of Agriculture? You mentioned that you met with 20 different groups.

Dr. Hewings: No, we have not met with the Ontario Federation of Agriculture. I am trying to think whether in fact they have appeared at any of our meetings. I do not think so. We would have to check.

Mr. Pollock: That would be a point worth commenting on. I would point to the fact just mentioned, that agriculture is the number one industry. Here is your ministry having 20 meetings around the province and not having one meeting with them.

Dr. Hewings: I should point out that agricultural sources are exempt from the legislation. However, they are not exempt from the effects of pollution which might arise as a result of our not having regulations. Also they are very vulnerable to what we call land-use problems in which you have urban areas moving in on agricultural areas and some conflict occurs between the two land uses.

Mr. Piché: I would also like to reflect back on the earlier question in terms of the economics of how broadly you consult. It is the same sort of problem. If you consult with virtually everyone, the process can go on indefinitely. So what is the benefit? I personally have some mixed feelings on how broadly you should consult, because it does take time. There comes a point when you have to cut your losses and get on or you are never going to get something that you felt professionally was required and good. You're never going to get it to the stage where it is going to have a real impact on the environment. I guess the agricultural community has always been, and perhaps justifiably so, a community that has been outside of much of the regulatory authority that the environment has dealt with. It is similarly so with pesticides, as my predecessor was discussing.

Mr. Pollock: For instance, you hear a lot of comments about the fact that acid rain has seriously affected maple sugar production. That could be. I am not in a position to say it has or it has not. However, I do know that some of the circumstances in regard to making maple sugar is a direct result of the weather. It has to freeze in the morning and thaw during the day and that is when you get the run of the sap. We have not had that kind of weather condition in southern Ontario for the last two or three years--only for maybe about a week, then, bingo, it either turns extremely cold or extremely hot. I tend not to put a lot of faith in the fact that acid rain has really seriously hurt maple sugar production, but maybe it has. I really do not have a lot of knowledge on it either.

Mr. Piché: Is that a statement or a question? Do you want me to respond?

Mr. Pollock: You do not have to respond.

Mr. Piché: We do have expertise and if you wish to avail yourself of that expertise, Dr. Sam Linzon, who is assistant director and my colleague, will be more than happy to give you all the time you wish. All I can say is that it is a very complicated thing and certainly not one single issue. Whether it plays a role--pestilence, disease--the whole field is not simple. That is part of the problem. Anybody who says that maples are dying because of acid rain is representing an extreme position. He is not wrong and he is not right.



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Mr. Ruprecht: Toxic air emissions which are not steady or maintained over a prolonged period of time are very hard to catch. That has been the problem, as people in the Junction Triangle have found out. Essentially then, you are saying you have state-of-the art technology in what are called sniffers. These are mobile units that drive around the country.

Mr. Piché: Are you talking about our mobile air monitoring units and trace atmospheric gas analysers?

Mr. Ruprecht: That is right. What do you call them?

Mr. Chairman: Mr. Ruprecht, I am being asked to persuade you to speak into the microphone.

Mr. Ruprecht: You cannot hear me?

Mr. Chairman: No, I can hear you, but I think Hansard may not.

Mr. Ruprecht: Was I mumbling? Did you understand me? All right, do you want this again, word by word?

Mr. Chairman: You have to stay closer to the mike so they can pick it up, that is all.

Mr. Ruprecht: Oh, sorry. Consequently, these sniffers that are travelling around are not very numerous because of the great amounts of money they cost. But it is very necessary to get them to the spot immediately.

Since the problems in the Junction Triangle, which the chairman now obviously has some interest in, and over which we had a lot of fights with the ministry, I might add, at that time because we were in the opposition--some of you may not remember ever being the opposition, but we were. I am wondering whether you have purchased any more of these sniffers and how quickly you can get around to respond to any emergency calls.

Mr. Piché: They come under the generic term of MAMUs, mobile air monitoring units. The ministry started with so-called MAMU 1 and MAMU 2. Going back quite a few years, perhaps 10 years, almost a decade, Dr. Eugene Singer has been a pioneer in this methodology within our branch.

They were added to some five years ago by the acquisition of the TAGA, which is MAMU 3. That is electronic and is known as the trace atmospheric gas analyser. That was a TAGA 3000. Recently we purchased--we received it late last year--the TAGA 6000, which represents state-of-the-art. It is a \$1.2-million machine, so you are not going to buy too many of them.

We now have four of them. At this minute, only one unit is actually serviceable. The MAMU 2, which has been around for a great deal of time, was virtually stripped apart this winter and is being rebuilt. MAMU 1 is on standby in case there is an emergency. The problem with the two TAGAs is we are attempting to train staff. You cannot just go anywhere and find the staff to run these things. It takes a good year before they get to the stage where the vehicles are of any use. We are hoping that in early to mid summer, perhaps late summer or early fall, we will have the TAGAs out and begin surveying, begin using them, as you say, to go around and sniff. But you said earlier something very appropriate, that you can have a fleeting problem, a transient problem and by the time you get there it is gone.

Mr. Chairman: I like the word "fleeting." I now represent the area which is the Junction Triangle so I do have in fact--

Mr. Ruprecht: A fleeting interest.

Mr. Smith: A fleeting problem. Can I ask a supplementary to that?

Mr. Chairman: I do not know if he had a chance to finish his answer.

Mr. Piché: I have been director of the air resources branch since October 1986. One of the areas that is of great interest to me is this issue of complaints, where we send out this very expensive equipment with very expensive support staff. By the time we get there and run our spectrum analysis and come back, write the report and send out our report, it says everything is great. People living there do not think everything is great. So what can you do to represent reality more?

We have major investment at the moment in several areas to help us better address these kinds of problems. Part of it has to do with what we call the subjective dimension of odours. What you may find uncomfortable odoriferously, I may not, and these other folks here may find a whole spectrum.

That is part of it. People tend to think if they smell it and it smells foul, it is obviously bad for them. Sometimes that is true, but it is not necessarily true. What they have to look at is either visual, in terms of dirt, suspended particulate, black smoke or a smell. Of course, in extreme cases, if they become very ill, then the causality is rather definitive.

But for the most part, like the Junction Triangle, people do not become ill. It is like smoking: You have a cigarette and you do not die, so it is very difficult to establish the causality. There is one, but it is very difficult. You go to the Junction Triangle, and the meteorological conditions are juxtaposed in such a way that it is uncomfortable where you are standing, so you are going to move away. But if you own a home and you are in your backyard, you cannot.

We send equipment out but, by the time we send it out, the wind direction has changed, emissions have changed, so we do not measure anything.

Mr. Ruprecht: Although the situation has improved a great deal; there is no doubt about that.

Mr. Piché: I think it will improve. Dr. Hewings may want to add something, but certainly this proposal--and I emphasize that this regulation is a proposal--at the very minimum will ensure the integrity of air quality, and in many instances will ensure an improvement. There is a scheme within it to classify emissions, based on things like toxicity and carcinogenicity--just how bad they are, if I can speak in simplistic terms--and then put controls on the operations, based on how dangerous those substances are in society.

Over and above that, if that is not good enough, look and see--the infamous word "model" again comes in--model the air and see if our standards are exceeded. The second level of control is the air standard. If the air standard is exceeded, it is very likely that industry will not be allowed to be built either at that time or in that location.

There are some very significant proposals in here with respect to air quality. What I am saying is that it is likely in the future that junction



triangles would not be allowed to accrete again. It just would not happen if this regulation is promulgated; certainly, it is very unlikely to happen.

Mr. Chairman: Mr. Smith, do you have another question?

Mr. Smith: You have partly answered the question as you were discussing further. I come from Lambton and I get a number of complaints, calls about Tricil. You talk about these sniffers. I have only the nose the Lord gave me, I guess, but I am allergic to some of these chemicals. I know that when I drive by Tricil, a typical day would be a heavy overcast, and I have to agree with the people that the smell is pretty bad.

If you happen to be allergic to some of these chemicals, I do not really know how you live. Have you got one of these sniffers in that area? I know they tell me it does not get out quickly enough. They call the Ministry of the Environment and the sniffer, somebody comes out--I do not know whether it is the sniffer. By that time, they have shut the stack down, and you do not smell it in the air. But I know I have driven by on a cloudy day and it is pretty heavy going.

Mr. Piché: I just happen to have here, for other reasons, a list of the surveys that were done in 1987. I wondered whether Tricil was one of them. Somehow I seem to remember that it was.

Mr. Smith: I thought I had heard that you had--

Mr. Piché: We have done it from time to time, OK? The thing is that it is the same sort of story. People complain, and we go down. Obviously, we would love to have many of these, lots more of them and lots more people, but resources just do not allow that. With a fleet of four and a staff of 25 to run them, you are talking a very significant amount of money. It costs \$5,000 a day for MAMU 1 and \$7,500 a day for MAMU 2. That is what it costs to send them out. Every day it is out there, it is \$7,500, so it is expensive.

On the other hand, I would think there is no amount of money we should worry about spending if people's lives are at stake. The problem in most instances is that it is, as you say, aesthetic or personally discomforting. It is very difficult to demonstrate any immediate health impact.

We go out and measure. If it exceeds the standards, then we can prosecute or deal with the issue. If it does not exceed the standards, we are virtually helpless. We go back again, if the situation continues. Maybe the company makes some improvements; maybe it does not. People complain again, and back we go. If the weather conditions are right, we may catch them and if they are not, we do not.

Mr. Smith: Have they got equipment they can put on these stacks that can take away all that pollution or that heavy odour?

Mr. Piché: I will decline to answer that--I realize that may seem inappropriate--for the following reason. We consult with our regional abatement people who have a more familiar knowledge of what equipment is there. I must tell you that I do not know what abatement equipment they have.

So what we would do when we get a complaint is we would give the technical information to the regional people who have the detailed knowledge of the operation to decide whether it is appropriately controlled or appropriately abated, or whether there is some disruption in the control

procedures. That information could be obtained. I do not have it at my fingertips at this time. They are not on this current schedule of surveys.

1230

Mr. Smith: But you do think they have been on that.

Mr. Piché: They have been on it. I know that Tricil has been on it.

Mrs. Stoner: I am interested in the MAMU van and in the implementation of some of the regulations. I believe as the result of 200 complaints of odour there was a case recently dealing with a meat processing facility. Is that correct?

Mr. Piché: How recent is recent? In the last six months?

Mrs. Stoner: In the last month, a decision.

Mr. Piché: I apologize. I am not familiar with it.

Mrs. Stoner: Charges being laid by the ministry.

Mr. Piché: It may be so. There is an investigations and enforcement branch that would lay the charges. We would not necessarily be apprised of the charges unless some of our expertise were required. I do not recall a request in the last two months from central region asking for advice in this area. It is very likely that there is a charge under way, but we would not necessarily be informed. Having lived in Toronto, I know this situation has been a frustrating issue for a long time.

Mrs. Stoner: I think it was reported in the press within the last two weeks, so it is fairly topical. My question really relates to the fact that 200 people seem to be able to get action with complaints on odours, whereas the thousands of complaints that have come as the result of the Metropolitan Toronto landfill gases have resulted in a visit from the MAMU van but have not resulted in any charges.

Mr. Piché: Are you talking about Brock West now, that landfill?

Mrs. Stoner: Yes.

Mr. Piché: I remember a van did go but, if I recall correctly, they were not in excess of ambient air standards.

Mrs. Stoner: I think to some degree that related to the fact that the site was operating particularly well when your vehicle happened to be there.

Mr. Piché: Again, that is one of the problems. Are you going to spend the kind of money that has the van there virtually night and day? At the moment, we have a very extensive network in Ontario for things like NO<sub>x</sub>, carbon monoxide, total suspended particulates, total reduced sulphurs and so on, but we do not have it for the organic, the contaminants, these things that are sort of toxins, if you will. We do not have such an extensive network. For the most part, that methodology does not exist yet. We have the wherewithal to go out with the vans, but when a van goes back, if there are upsets or irregularities, then it is just the people, as you say. The technology is not there to determine it.



Mrs. Stoner: Is there no sort of callback situation?

Mr. Piché: Yes, it does go out.

Mrs. Stoner: If the MAMU van happens not to find a problem on any particular day, does it never come back again?

Mr. Piché: No. Please appreciate the logistics. We canvass our regions. There are six regions in Ontario with six regional directors. We canvass them once, usually late, at the end of the field season. These things tend not to work very well in December, January, February or parts of March. In other words, they depend on its being reasonably warm.

Mrs. Stoner: That is when you were out.

Mr. Piché: That is part of the problem exactly. It was an emergency, we were told, so we had to go. We do it because we are asked to do it, but it is not the best time of the year for the reasons I just said. Do we go back? Yes we do, but we have a very large number of requests, so as soon as we do one field survey, we are on to the next one. There is about a 10- to 12-month lead time if it is not deemed to be an emergency. If it is deemed to be an emergency, our whole schedule is disrupted, and we will go to that site.

Mrs. Stoner: What constitutes an emergency?

Mr. Piché: Essentially when the minister says it is an emergency.

Interjection.

Mr. Chairman: I may be just forecasting here, but I would bet a lot on that one.

Mr. Cleary: My questions have been answered partially by David's answer and partially by the last speaker's answer. I am very familiar with your sniffers, coming from where we have chemical plants, a paper mill and textiles. Anyway, to go a bit further, what concerns me are the municipal and the industrial dumps and the gases. I got most of my answer from the last questioner on the chemical gases.

Mr. Dekany: Gentlemen, you have said that you intend to prepublish a draft of the regulation and give a 45-day comment period. Where is it intended to circulate or publish the regulation in draft? Is that to be in the Ontario Gazette, in newspapers or a combination of both?

Dr. Hewings: We have not really got to the stage of deciding how we will do this publication. I think we were working on the assumption that we would be following a very similar format to the one we have followed up until now, circulating it to our mailing list and advertising that we had produced a draft regulation and would like comment upon it. However, is it a possibility to put draft regulations in the Gazette?

Mr. Piché: It was not my understanding that you did that. I may be wrong. It was my understanding that we would not necessarily put a draft regulation in the Gazette.

Mr. Chairman: Are you asking us if you are allowed to or are you telling us that you are not allowed to?

Dr. Hewings: Are we allowed to?

Mr. Piché: We do not know.

Dr. Hewings: I was under the impression that you were not, but if you are, then this would also obviously represent a good medium to advertise what we are doing. Again, we would want comment back on what we are presenting.

Mr. Piché: Just moving forward a little bit, we anticipate a fairly significant body of comments. With the regulation as proposed, it is reasonable to anticipate some significant implications in Ontario and so we expect there will be very detailed and carefully thought through comments on this document. Part of the next step, I think, will depend on us having a chance to fully digest those comments. Until such time, while we can generally suggest what we intend to do, that may be subject to revision once we have had the opportunity to fully assimilate the range and depth of comments we anticipate back on this document.

Mr. Dekany: You obviously think it is a good idea to have advanced publication of a draft in the case of this particular regulation. Do you think it would be a good idea for all environmental regulations, or at least for a broader net of environmental regulations?

Mr. Piché: I think to answer that I will just digress for a moment. This regulation is kind of the key centerpiece of air monitoring and control in Ontario. This is the centrepiece air regulatory machinery. When you deal with this regulation, you are dealing with a large percentage of the air mandate and responsibility. As to whether that is appropriate for other areas, I would have to think a little bit on that. Certainly, I believe it is appropriate here.

As I said earlier, especially for air, I say unabashedly that Ontario has, for its size, for the industry, some of the best if not the best air quality in any jurisdiction. That has been no accident. That is attributable to the professionalism that has been exhibited. It is also a consequence of the vigilance of individuals, the citizenry of Ontario, being concerned about air and being knowledgeable about what they can do. If they see a black smokestack, people complain. As a consequence, things are done. It is important to consult broadly so people understand what their rights are, what the rules are, what the regulations are. I would say, in this case, yes. Whether it is as appropriate in, say, water or waste, I do not know.

Mr. Dekany: Following on Mr. Pollock's questions regarding acid rain, you may be aware that in its 1987 report entitled Acid Rain in Ontario the select committee on the environment recommended that notice and comment procedures be incorporated into the Environmental Protection Act. The committee felt that proposed acid rain regulations should be published in the Gazette and in appropriate newspapers as well, and that public hearings should be held on the proposed regulations.

In particular, the committee recommended that the Environmental Protection Act be amended to include a notice and comment procedure which would operate in the following manner: All proposed regulations pertaining to acid rain would have to be published in the Ontario Gazette and in appropriate newspapers in the province, accompanied by an invitation for briefs or submissions on the proposals. Following publication of the proposed regulations, public hearings would have to be held on the proposed regulations by a designated committee of the Legislative Assembly. No proposed



regulations could be filed with the registrar of regulations before the designated committee of the Legislative Assembly had completed its hearings and tabled its final report, or before a minimum of 90 days after publication of the draft in the Ontario Gazette and in the appropriate newspapers. Would you be in agreement with such a recommendation?

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Mr. Piché: That is a toughie. We are talking about what we call Countdown I, I believe, the acid rain regulation. Maybe a little bit of history here is useful.

Regulation 308 has been the general air pollution regulation, but there have been a fair number of what we could refer to as anomalies. In other words, in the past what happened was if you were not satisfied with the situation as controlled by regulation 308, if there was enough public outcry--again, a reason to consult, if you will--then special regulations were passed. Countdown I was such a special regulation. Dealing with the Lambton Industrial Society is another such regulation. Situations in Ontario which were atypical of the general situation were dealt with subordinately to the general air pollution regulation.

I guess maybe a simple answer, although maybe not one acceptable to you, is that in reviewing this approach, we are dealing in my opinion with that subset. So the public review process here and the proposals involved in fact encompass that whole activity. It may not seem that way, but in fact that is the intention. However we go forward, whatever the review process is, whatever the next steps are, would be seen as the blueprint, if you will, for all future subprocesses.

Unfortunately, it may not be deemed to the broader community that this is a subprocess. For all intents and purposes, it is going forward in parallel right now. Maybe I am not answering your question and maybe it is not clear, but that is how I see it. I see Countdown I, if you will, of the acid rain regulations to be subordinate to this whole process. They may not be perceived that way now and they may be so far along that it will be very difficult to bring them in, but that is how theoretically they would be. They were special circumstances under the old regulation 308.

Mr. Dekany: Specifically for the general regulation, would you agree with the recommendation of having a legislative committee study the proposed regulation at the very end of the consultation process and hold public hearings?

Mr. Piché: I personally do not see what that would accomplish that we would not have already accomplished, so I think I would defer from offering anything further on that. That may be a political issue, not an administrative issue. For technical reasons, I do not personally see the advantage of that. I think we know the technical community. We are recognized technical experts. From a technical perspective, when we deliver a package, it is the best we can produce from that perspective. Whatever this legislative committee would add would be outside our technical responsibility, in my opinion. I would not see the advantages of it.

Mr. Kaye: It was mentioned earlier that the executive sees these consultative procedures as a requirement of the process. How has the executive expressed that requirement?

Mr. Piché: I am sorry.

Mr. Kaye: When you were asked earlier about why the ministry had proceeded with these consultative procedures, it was mentioned in response in part that the executive sees this as a requirement. I was wondering how the executive has expressed this requirement, how this message has been conveyed throughout the ministry.

Mr. Piché: By assisting in the design of the consultative process, by working with us to indicate just what the various components of that process would be.

Mr. Kaye: Has anything come down from the minister's office in terms of some kind of policy statement about the need for consultation?

Mr. Piché: I would not say a direct policy statement, but certainly in terms of advice, the internal community that sat down and dealt with this proposal and how the consultative process would be dealt with consisted of members of the minister's office. They were part of the process to decide how consultation would be orchestrated. But the minister has not to my knowledge said, "Thou shalt do this," or, "Thou shalt do that."

Mr. Dekany: Getting back to the question that was raised about when you send out the special vehicles and what constitutes an emergency situation, you said that was determined by the minister. Is there a policy directive set by the ministry as to what constitutes an emergency or not?

Mr. Piché: Perhaps I answered too quickly on that. There are two levels of emergency. The first level of emergency would be a Medonte, a Mississauga, a major chemical fire. That is one level of emergency. That is something reasonably obvious. Let us call that a commonly recognizable technical emergency that anybody would recognize as a problem. The next dimension is simply, for want of a better word, a political situation where there is enough pressure brought to bear that the minister says, "Thou shalt put the vehicles out there," and we do.

Mr. Dekany: So there is no guideline set out that would tell a member of the public how the minister decides.

Mr. Piché: I did indicate earlier and I have a list. Every year, roughly from October to November, we canvass all our regional directors as to where they would like the machines to go. Each of those directors, of course, has people--district officers, abatement engineers--who are aware of problems in their area. They prioritize those problems and when they send the material to us, they will say, if it is the central region: "We absolutely insist that you go to Brock landfill. That is our number one priority." When we put our schedule together, we put Brock landfill down as the number one priority, in consultation. There may be some other situation in Hamilton that is considered provincially, from a technical perspective, to be more important.

Now we have that list together. That list can be changed in two ways. It can be changed, first, if there is a major calamity some place, and so we go out. Second, it can be changed because internally someone feels, for whatever reason, that you have to go here instead of there. I can give you an example. Last year, there was a public report by a University of Toronto professor on the mist at Niagara Falls. Quite frankly, that was a goose chase. We knew that. We were advised that we would go down to Niagara Falls, which we did to do the survey, and of course we confirmed what our scientists had told us all



the way along, that it was not a problem. That is a case of public pressure, public concern.

The minister's office in many instances does not have to advise us. We can just see that suddenly there is a tremendous amount of press. We know that sooner or later good judgement will dictate that we had better get down there, do measurements and confirm what our basic science tells us, which is that our academic colleagues were extrapolating.

Mr. Chairman: I would like to thank both Dr. Hewings and Mr. Piché for a very educational and wide-ranging presentation. On behalf of all my colleagues and myself, I want to thank you. It was excellent and we appreciate your assistance.

The committee will resume at two o'clock sharp. We have witnesses at two and three.

The committee recessed at 12:47 p.m.

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T-11

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

REGULATORY PROCESS

TUESDAY, MARCH 29, 1988

Afternoon Sitting





STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

CHAIRMAN: Fleet, David (High Park-Swansea L)

VICE-CHAIRMAN: Beer, Charles (York North L)

Cleary, John C. (Cornwall L)

Fawcett, Joan M. (Northumberland L)

McCague, George R. (Simcoe West PC)

Pollock, Jim (Hastings-Peterborough PC)

Pouliot, Gilles (Lake Nipigon NDP)

Ruprecht, Tony (Parkdale L)

Smith, David W. (Lambton L)

Sola, John (Mississauga East L)

Swart, Mel (Welland-Thorold NDP)

Substitutions:

Lupusella, Tony (Dovercourt L) for Mr. Beer

Stoner, Norah (Durham West L) for Mrs. Fawcett

Clerk: Manikel, Tannis

Staff:

Kaye, Philip J., Research Officer, Legislative Research Service

Dekany, Andrew C., Legal Counsel

Witnesses:

From the Ministry of Municipal Affairs:

Bell, John W., General Counsel, Community Planning

Farrow, G. Milt, Assistant Deputy Minister, Community Planning

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Tuesday, March 29, 1988

The committee resumed at 3 p.m. in committee room 2.

REGULATORY PROCESS  
(continued)

Mr. Chairman: We have before us John Bell, who is the general counsel, community planning, Ministry of Municipal Affairs, and Milt Farrow, who is the Deputy Minister of Municipal Affairs, I believe. I am looking at Mr. Farrow?

Mr. Farrow: Assistant deputy.

Mr. Chairman: I was all prepared to promote you.

Mr. Farrow: I will accept it.

Mr. Chairman: Then obviously beside him is Mr. Bell. Our process with this committee has been to encourage the witnesses to make a presentation on whichever matters they think are relevant, and then invariably the members of the committee have lots of questions.

MINISTRY OF MUNICIPAL AFFAIRS

Mr. Bell: I take it the interest of the committee is with finding a system to alleviate the load on the regulations by taking some course of action other than doing a regulation. Am I correct in that?

Mr. Chairman: Yes, the object is quite a broad one. It is to look at the whole area of formulation and review of regulations. The list of issues that the committee has been considering in a formal way is two or three pages long. We are interested in taking a look at the review process, the scrutiny process that this committee is supposed to perform and how we can improve that. We are also looking at the realities of the process of regulation from the ministry side, whether ministries are able to effectively produce regulations, the whole issue of notice and comment and the degree of consultation with other groups--nongovernment groups and client groups of a ministry--as well as the administrative effectiveness in the whole process. You can operate well within any aspect or all of those aspects.

We were considering in particular the Parkway Belt Planning and Development Act, the Planning Act, the myriad of regulations, which I understand come through quite routinely, and whether there is not a better way to deal with those. That was one of the specific topics.

Mr. McCague: Mr. Chairman, after I put my hand up, you did mention the Planning Act. There is an aspect of your regulation-making powers in the ministry that is quite different from most other ministries, although the minister has the right in some cases to sign regulations, and it is that aspect of it that probably we want to get at. Is there a better way of doing it, in your mind, or is it well done now, or whatever?



Mr. Bell: I believe it might be useful if we look at some figures here initially to get a handle on what the volume actually is. In 1985 we put on four new zoning orders under the Planning Act, in 1986 we put on 14 new orders and in 1987 we put on six new orders. The volume in terms of new orders is not all that great.

In 1985 we had 68 amendments and, out of those, 16 related to the township of Nottawasaga. In 1986 we had 82 amendments; 25 of those were, again, for Nottawasaga. In 1987 we had 70 amendments; again, 21 of those were for Nottawasaga. The Nottawasaga order was revoked at the end of last year, so automatically you are reducing those total numbers quite substantially in terms of amendments.

Looking at the parkway belt planning area, there were 14 original orders placed on there in 1973, when the legislation was originally enacted. In terms of amendments, in 1985 there were 20 amendments, in 1986 there were 29 amendments and, in 1987, 11 amendments.

The first suggestion I make is that perhaps while there is a problem, it appears to be more or less a problem that is solving itself in terms of numbers. The numbers really are not all that substantial as they stand today. That is the first suggestion we would like to make.

The other comment we would make is that we would have a concern with taking all the orders right out of the regulation system, because immediately we lose the benefit of the index that was carried in the annual statutes. Any lawyer looking at a property would not have the benefit of turning to that ready reference to find whether there is an order affecting his client's plans.

I do not know which system we could come up with to get over that. In southern Ontario, we could perhaps put the onus on municipalities to maintain the record. They already have an onus for their own zoning bylaws, and that is what these really are; we are talking zoning control, except that they are placed there by the minister. I think we could maybe place that responsibility in southern Ontario on the municipalities. But the fact remains that most of our orders today are in northern Ontario, in the unorganized portions, so there just is not any system to accommodate that part of the problem.

One aspect we have considered is the possibility of perhaps retaining a system of filing the original order as a regulation and carrying the amendments not as a regulation but simply as a minister's order, because the amendments invariably affect only one property: an amendment to permit a reduction of a side yard or the construction of a particular type of building. I think that, using the terms of the Regulations Act, they would not be regulations that would be of a legislative nature in that they affect only one property.

Maybe we could devise some legislation to recognize that and have only the parent orders carried from the system as a zoning order and keep the amendments outside of the regulation system. That is another possible alternative. I think that is about all we could propose at this time.

Mr. Chairman: Perhaps I can be of some assistance. I would be interested in comments on some facts which are related in a memorandum that was prepared for this committee. In fairness, I understand you have not seen the memo. But we have also had some evidence which has suggested that the current process of indexing, for instance, was such that if you did not know there was an order affecting your property, you would never find the darn

thing, in terms of the past history of what is in existence and the ongoing pace of having amendments and what not to all these orders.

The memo in particular indicates that some amendments are not even listed in the schedule, apparently because the list is regarded as too lengthy unless there are amendments excluded. If you are already going to exclude, as you are suggesting, the amendments, I am wondering whether there is any point in using a system of regulation; whether minister's orders or just registering things on the land, on title, would not be a more efficient way to deal with virtually all of those sorts of provisions.

What benefit is there that comes out of the regulatory system? I guess I was not clear on that.

Mr. Bell: It is the record-keeping aspect of it. A lawyer dealing with title to land can look at the annual volume of the statutes. Listed there is each parent order and all the amendments to it, right to the end of that year. As well, there is an annual index published in the Ontario Gazette which carries those.

Mr. Chairman: There are quotes here from a report of the statutory instrument committee of 1979, which says:

"The filing and publication of these ministerial orders under the Regulations Act is a superfluous procedure which could be eliminated without the slightest harm to anyone or even causing anyone any inconvenience. There was strong, uncontroverted testimony before us that very few persons, including lawyers, ever come to the office of the registrar of regulations in the Legislative Building at Queen's Park to inquire about the orders made under the Planning Act and we accept the testimony that relatively few people have ever heard of the Ontario Gazette, let alone read it."

I would say that all of the evidence we have heard is consistent with the comment about the Ontario Gazette. It is not a widely read document.

1510

I am putting you on the spot in some measure when you have not read the memo, and again, I do not want to do that in an unfair way. But there is some suggestion here that, given the numbers of regulations filed, which are also shown in this memo--and it seems to be close to 100 under the Planning Act each year--almost any other record-keeping system would be more a more effective one for everybody concerned, whether you did it in the registry offices where people would actually do the title searches--you would just have another index to look at--or however you devised another system.

I guess we are wondering in part what your suggestions are for a different system. People do not really come and look at the office of the registrar of regulations.

Mr. Bell: I think I would like to start with the premise that there has to be some reliable record maintained somewhere that can respond to inquiries as to whether there is or is not any control on the land. Under the present system, a lawyer can look at the regulations, which are in every county's district law library, and he can satisfy himself by looking at it that there is not a minister's order affecting his land. If he finds one affecting his land, then it is a simple matter for him to contact the ministry and find out the details of that. He can give us the regulation number and everything, and we can respond to that.



Mr. Chairman: When land is being title searched, lawyers do not look at anything; the title searcher goes and looks at it. Title searchers do it almost exclusively in the land registry offices. Again looking at the memorandum, it seems to indicate that that is where ministerial orders are already kept on file anyway. The process of having regulations is, as they have said, superfluous. I guess I am just reiterating the practical problem that maybe we do not need to have the record-keeping in the regulations format.

Mr. Bell: With respect, I think today you will find lawyers do check out zoning on any property they are purchasing for a client. In southern Ontario it is a case of dealing with the municipalities, a clerk who maintains a record of zoning bylaws.

Mr. Chairman: That is a city bylaw that they are inquiring about. That is routine.

Mr. Bell: Yes, city, town, township. The lawyer will advise his client as to the details of the zoning on the property that he is purchasing. It is similar in northern Ontario. I anticipate that lawyers do the same thing. They make an effort to determine what control may or may not apply to the property, and the simple way for them to do that is through the list of regulations in the annual volumes of the Statutes of Ontario. They can determine that there is not an order affecting that property, and that clears them.

If they find that there is an order there, then they can write to the ministry and determine what the details of it are, or if they have the regulations available, they can turn to the regulations themselves. I guess we could set up a system in the ministry, but it would be a duplication of effort.

Mr. Chairman: It seems to me, frankly, that you already have the duplication of effort. Nobody goes and looks at the regulations in southern Ontario as a matter of course, in my experience as a lawyer. What you do is contact the municipality and, through your title searcher, you go through records at the land registry office. Nobody goes searching through the regulations ordinarily unless there is something that you know you have to go and look for. It is in fact highly inconvenient to look for anything in the regulations because it is not very well indexed. We have had evidence to that very issue.

I am putting it in a kind of confrontational way and I do not mean to do that, but I must tell you that my personal experience suggests that nobody goes to look at the regulations in the first instance. It is a place of last resort. You go there if you have a problem or you are looking for something peculiar.

Mr. Farrow: My understanding is that, especially in northern Ontario, where most of our orders are, the legal profession has come to expect this is where they are, and it is a relatively simple thing for them to do. They can look in one place and see very easily what orders there are and then, as Mr. Bell has pointed out, come and check with us if they want more detail on the thing. They can be aware of what orders are affecting what areas by looking in the summaries of the regulations.

I guess part of our concern is that we have a system that seems to be working. We recognize that if we can find something better, we want to get something better. We want to have it as efficient as possible. But when we are dealing with people's land, the use of lands, we want to make sure that we get something that is a good system.

Registering things against title maybe is a good way, but I am not sure that the cost of some of these things may not become a little inefficient or the manner of things that we in fact can register. I am not sure how and what process we would have to go through.

Mr. Bell: If I might add to that, I understand that the current policy of the Ministry of Consumer and Commercial Relations is that it will not accept for registration anything that does not relate to the title of the land as distinct from the use that may be made of the land.

Mr. Chairman: They will take anything they are told they have to have registered. That is what the legislation is for. They will take anything that has to be registered. Certainly all sorts of use of land things are registered. I cannot testify personally for northern Ontario, but if you buy land in Etobicoke or in Malton you will quickly find that there are all sorts of things registered about the airport, and that is the use of the land.

Mr. Bell: There has been in the past, but they are adopting a new policy now tied in with the Polaris system. We have had letters from them.

Mr. Farrow: One of the problems we are having--this is digressing a little bit, Mr. Chairman--you mentioned airports. We have problems putting height controls around airports, and we were told a couple of weeks ago by Transport Canada that the costs in Ontario are 10 times what they are in Manitoba and Saskatchewan, as two examples that we were talking about, on the basis, they claim--and we were not prepared to accept this--of what it takes them to get something registered in Ontario that would be accepted by the registry offices, the land titles offices.

That is something we are in the process of looking at, but they are able, they tell us, in some provinces to be able to take a map, put on the uses or the heights or whatever they may be and take that and deposit it in the land titles office or a registry office and it is there, and they are not allowed to do that in Ontario. There is a very, very difficult and costly procedure that, I think, may cost \$20,000 in Manitoba but would cost \$200,000 for an equivalent airport or municipality in Ontario.

We were quite prepared to look at other alternatives, but we would not want to get into something that really gets us into this sort of thing of having to survey and have an absolute description of the land affected by our order. Now we know the areas and we have never had trouble locating them, but I am told, again relating back to airports, that they have to have surveyors out on the ground to make up plans specifically for what they are dealing with.

If we had to start to survey our zoning orders, we could be in great trouble. I am not saying that there is not another way through the Ministry of Consumer and Commercial Relations. Maybe, working with this committee, we can find ways to change that approach with regard to land use controls that they want deposited in land titles offices, where they are most convenient for people who are checking titles to find them.

It used to be, as you say, that you could register anything. Jokingly, you write something on an envelope, and if it affected the people's property in whatever way, you gave it to the registrar and it would be put in a big abstract book and put in some fireproof vault someplace and be kept for ever and ever. But as Mr. Bell has pointed out, the new Polaris system, we understand, is making things a little more difficult to do this.



Mr. Chairman: For the benefit of the members on the committee, the Polaris system is a system of computerization that deals with the way land is described in Ontario and as a result of that the form of documentation has been altered. It is an attempt to modernize the way in which land is described and the way in which transactions take place. It is a mechanical thing. It does not really change the concept of the transaction in any way, but it has had some significant, practical impact in title searching and to some extent the practices of lawyers in dealing with their clients. Its long-run objective, among other things, is to dramatically cut down the amount of paperwork that is required, and at the same time provide greater precision in dealing with land in Ontario. That is not a ministry version of what it does, but that is my understanding. I think that is in some sense what is being referred to.

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I have other questions, but I think in fairness to the committee members I will open it up to them before I raise any others.

Mr. McCague: I am not sure there is that much the matter with what you are doing, but as a committee we are looking at the overall system and with particular emphasis on notification to people as a certain regulation might affect them. The federal system we have heard about. Your regulation-making powers are basically all those of the minister. I think in order for us to criticize what you are doing--if there is any criticism of it--we need to know what it really is you are dealing with. I am very familiar--since Nottawasaga township is in my riding--with the problems that surrounded that when a reeve closely related to the present government said that when it came to planning matters that he was going to put a fence around the township and do as he liked from within it. That prompted the then-minister to put a--is it a zoning order, is that what it was called?--on the whole township and told them to get the matters all straightened up within a couple of years. I guess it ended up being 15 years?

Mr. Farrow: Quite a few. And it was the end of last year.

Mr. McCague: It was that order and the necessity for having changes from time to time that created an awful lot of the orders which you are referring to. I understand the parkway belt regulations all right and I know where northern Ontario is. Well, some of us good members here do not understand anything north of Steeles Avenue, you know. However, what kinds of orders do you have? Not parkway belt, not northern Ontario. Can you categorize those, John, in some way?

Mr. Farrow: We have various zoning orders. Some of the most recent we have put on have dealt with the Toyota plant. We put on a zoning order when it was expedient for the government to get the land zoned to permit and to make sure that Toyota knew they could do it and not have to go through a long process. We were involved with a zoning order--I was just up--with F. and P. Manufacturing which was a similar automotive plant. I believe that is in your riding, in Tottenham. Those are the most recent types of orders that we have been involved with in southern Ontario. We were working in conjunction with a municipality but we wanted to do something faster than what the present planning system permitted, what with municipalities having to give notice of public meetings, hold public meetings, bringing people in and doing things. The public participation process elongates things. The government decided in certain instances they wanted to shortcircuit that and make a decision, so they asked us to put on zoning orders.

Those are the only ones other than those we put on in northern Ontario, and in northern Ontario they are, in effect, like a mini-Nottawasaga. The effect of them in the north is that we will approve a plan, a subdivision, which is in a certain place that we feel needs some controls but is not in a municipality. We can then impose the control for side yards, setbacks, the various things that would go into a normal zoning bylaw. We can put that in by a minister's zoning order on the property. Really, I think, John, that is the only type of zoning orders that we have been involved with. That is what they would be in the north. They would probably deal with seasonal use and all types of setbacks and the standards for cottage development, say.

Mr. McCague: I am not that familiar with the Planning Act now, but would you see the same situation arising again in southern Ontario as you had in Nottawasaga?

Mr. Farrow: We would hope not. Just for the benefit of the people here, I will just point it. They had a Reeve who said, "No, we will not plan," and they were letting a lot of things happen so that our Ministry of Agriculture and Food and various others were asking, "How can we stop this?" We stepped in and, for many years, were the municipality with regard to zoning. They had to come to us every time they wanted to build a house, every time they wanted to change a side yard. Every time they wanted to do any minor change of use in Nottawasaga, we had to deal with it. That accounts for these numbers that are something like 16, 25 and 21 over the last three years. They all dealt with what is now dealt with by municipalities. I do not think we have any other renegade municipalities in the province that are refusing to become involved in the most basic planning documents

Mr. Chairman: There does seem to be involved a larger number of regulations under the Planning Act: in 1984, 119; in 1985, 90; 1986, 119; 1987, 82. I am just wondering what the breakdown is for the balance because the numbers you have indicated previously would not total that number for each of those years.

Mr. Bell: I took these figures, Mr. Chairman, from the table of regulations published at the end of last year. We did not include, in those, revoking orders. We are talking about parent orders and amendments. There were some revoking orders where ministers' orders were lifted--

Mr. Chairman: Yes. I am talking about the number of regulations filed with the registrar of regulations. For instance, in 1987, 82 out of 725 regulations of all ministries were simply dealing with the Planning Act. Another 11 were the Parkway Belt Planning and Development Act. Consistently, the figures are running in the order of 10 per cent to 15 per cent year by year.

Mr. Bell: As I say, Mr. Chairman, perhaps part of that discrepancy would be that in these figures we did not include revoking orders. Perhaps your figures include revoking orders.

Mr. Chairman: Whatever the reason, you end up with a large number of regulations, whether they were revoking or not. In fact, one of the banes of the profession is trying to figure out, when one regulation revokes another, exactly what that does. They are just terrible to have to keep following. Anybody with any degree of experience at all in terms of law, even when they are not lawyers, I think, quickly get frustrated with that. I guess there is also the Niagara Escarpment Planning and Development Act which has quite a number and it must affect quite a number of properties.



Mr. Dekany has some information with respect to one of the acts.

Mr. Dekany: I am just referring, Mr. Chairman, to a notice that was published in the Collingwood Enterprise-Bulletin on July 15, 1987, under the Planning Act, subsection 46(9). "Notice. Application to Revoke the Minister's Zoning Order, Ontario Regulation 675, Revised Regulations of Ontario, 1970." The notice indicates, "Take notice that an application to revoke the comprehensive zoning order affecting the township of Nottawasaga and filed as regulation 675 of Revised Regulations of Ontario, 1970, as amended by over 600 amendments, has been received by the Minister of Municipal Affairs." I read that just for the purpose of illustrating the voluminous number of amendments, at least in the case of that particular order. That is the one showing--

Mr. Bell: That is going right back to the beginning though.

Mr. Chairman: That is the one that goes back for 10 years or whatever.

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Mr. Farrow: Or more. That is the one where they say: "We had no choice, but that had to be put on. We don't anticipate ever having to take over the land use controls from a whole municipality ever again."

Mr. Chairman: I take it he or she, whoever the reeve was, kept getting re-elected?

Mr. McCague: No.

Mr. Chairman: So it must have been all of council that was supportive and the successive councils.

Mr. McCague: In fairness, I think what happened in that situation was that the escarpment commission was quite an inhibitor to the whole thing. In the efforts being made to get the escarpment under control, or whatever you want to say, even the ministry was reluctant to push them to come up with a new zoning bylaw in the face of part of it having to be replaced by the Niagara Escarpment plan. In fairness, that did add something to it.

But you have to realize--I think it says 1970 there; that is about the right length of time, 17 or 18 years--that during all that time you could not do anything. You could not create a lot or change the side yard or whatever without a minister's zoning order. Everything went through the ministry for that period of 17 years. That is why you have so many in that particular case.

At the start of his comments, Mr. Bell referred to something--I am not sure what you were saying, but were you saying that you were thinking of replacing some regulation-making powers with minister's orders?

Mr. Bell: That is one possibility we would like to explore. As a matter of fact, we are meeting next week with the registrar of regulations to consider different alternatives. That is certainly one we will be exploring, as to whether we could take the amendments out of the regulation system and leave them simply as minister's orders, which would not be--well, I guess we could gazette them if we chose to do so, but not as a regulation.

Mr. McCague: I think it boils down to the fact that we may be trying to solve a problem, in conversation with these gentlemen, which we do not

have. When you take the Nottawasaga out of it and realize that there is no power in anybody's hands in the north of Ontario, unless it is in the ministry, maybe we really do not have a problem as in some other ministries where there is a bulk of regulations. It would be interesting to get Mr. Farrow and Mr. Bell to check their figures to see where the discrepancy is between what you were reading from and what they gave us as the numbers.

Mr. Chairman: It is a fair comment as to what extent the problem may be. One of the issues is which things are best in the regulatory process; there may be other types of things which are better off not there. The point made in the 1979 report was that ministerial orders were kept on file in four locations: ministry offices, municipal offices, land registry offices and the office of the registrar of regulations.

That is why they were concluding that the last one, the office of the registrar of regulations, was unnecessary in light of the other places the records were already being placed. It may well be that there are now much more efficient ways of doing it. I am not sure that even the process of regulation is the only way you can deal with things in the unorganized territories. There may be better ways yet to do that and I guess that is one of the things the ministry may now be looking at, independent of our committee.

I take it that is part of the consideration that is under way?

Mr. Bell: Yes. As I say, we are meeting next week with the registrar because the registrar has expressed this same concern about the volume in the system.

Mr. Chairman: They have given evidence to that effect, that they are not happy with it. On page T-27 from Monday, March 21, 1988, in front of this committee, the registrar commented particularly on the Niagara Escarpment Planning and Development Act. I had raised with him at that time the issue of the Planning Act as well, and I also raised the Parkway Belt Planning and Development Act.

The words of the registrar were: "There seems to be no benefit to the public to process it through our office, go to the expense of publication and maintain in our office a record of it." That is the kind of evidence we have been hearing.

Mr. Farrow: One of the points that was mentioned was registering them on title in some way. We are about to be approaching the Ministry of Consumer and Commercial Relations on the airport problem. As I mentioned, because we are being told that the Ministry of Transportation is funding most municipal airport expansions and the cost of putting on federal zoning orders is so much higher here--it is not built into the system--we are doing without. We are having silos built at the end of various runways that some of you may be familiar with. The Department of Transport were telling us three weeks ago that there are rules and regulations where registration does not allow us to do it in a nice, easy and reasonable way.

If we were going to be putting zoning orders--whatever we might call them at the time, the minister's zoning bylaws or the minister's zoning controls--and registering them against the title, we would like to be able to have it put in the abstract book against the document but maybe not built into the whole system that now they want to go through. That might solve your problem that we are creating for you and the problem that has been created for federal zoning orders. We might find a way to make it possible that these could be kept in the registry office.



As Mr. Bell pointed out right at the very beginning, we now have a system where, rightly or wrongly, we are fireproof. If somebody does not find the order--it is there, it is in a document that comes out every year. Notice is given by us, when the order is put on, to the people who are affected by it. But on the ongoing basis where they can find it, there is a system of doing that. We would not want to have to try and run a registry system in our offices that was guaranteed to keep everything posted against all ways.

Maybe the best thing is a system where, in fact, these are put in a general whatever at the registry office so people could look through and could find these abstracted against the lot and concession, or the registered plan, or whatever the document is, in a relatively simple manner. That might be able to satisfy our requirements and the government requirements of ensuring that people can find where there is a land use control because that is a very important document.

What someone can do with the property they own--knowing those controls, I think, is as much a property right as you could ever get. It is one thing to have somebody tell you what you can do with your land. We have to be able to tell them what we are telling them they have to do with it, and they have to be able to find out in a relatively simple manner. We have felt that this has been happening now but we are quite prepared to look at other means. But we are concerned about setting up some system where we may have to be responsible for the record-keeping in an absolute sense in our offices, because we are really not geared up to that sort of detail on a forever basis.

Mr. Chairman: Maybe we can induce you to not issue the orders. I do not know.

Mrs. Stoner: Your minister's zoning orders around the municipal airports raise a question in my mind. You have a minister's zoning order in place now in Pickering and Markham, I believe, surrounding the aborted federal airport project in Pickering. I understand that the federal government is asking for a new minister's zoning order which would be much extended and expanded. Are you going to be putting something like that in place? How do you do it when there are no noise contours, there are no runway alignments, there are no details at all on any potential airport? How do you freeze that in advance through a minister's zoning order and how do you notify the potentially affected people

I do not believe there was notification to individuals in the instance of the implementation of the first minister's zoning order or the second. Is there now to individuals? By house property? By property?

Mr. Farrow: Yes, I believe so. Did we not give notice of that?

Mr. Bell: I could not say. I was not involved in that.

Mr. Farrow: It certainly was in the press.

Mr. Bell: That may have been the method.

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Mrs. Stoner: I thought you were saying that it be required to be noticed to individuals.

Mr. Farrow: I think it is the choice of individuals or by means of

notifying the press, similar to what a municipality can do on a zoning bylaw. If it is something which covers a large area, then we must publish it a certain number of times in newspapers in the area.

Mrs. Stoner: What is the status of the latest federal request?

Mr. Farrow: I am not specifically aware of that request, but we have not been putting on height control. What we had put on in the Pickering area was in effect a freeze. It was zoned agricultural which kept it what it was and any time someone wanted to change that they came to us, they made an application, and we amended it or we did not amend it as the case may be. We went to the municipality and checked with the Department of Transport if it was in a close-in area.

Now my understanding is they were going to be asking us to bring this area much smaller and I would have thought it would have been a similar type of control that we would be maintaining but just on a very similar area. Each individual application would come and look at it. But it did not include a built-in height control such as we had put on by another zoning order around Buttonville and around Collingwood airport. In those cases--and there may be one other, Peterborough, I am not sure of--we actually have height control zoning.

This is what the federal government does. They do not put on land use controls. The zoning regulations that they put on are simply height at the end of runways and within the vicinity of an airport that keeps silos from popping under the end or high radio towers being put up. In that way the order we put on, we can put on without runways being known or height or noise control because it is in effect a freeze. It is zoned for agriculture and nothing can go on without coming and asking us for approval.

Mrs. Stoner: Are you anticipating a request from the federal government on that?

Mr. Farrow: Yes, I think it is likely that the federal government will ask to pull back. I am not sure whether we have had any discussion with them. I am personally not aware of it, but that does not mean that we have not had some discussions on pulling back. That would not be necessarily a new order. It would be a smaller order but it would mean revoking part of the original order.

Mrs. Stoner: Which would then free up.

Mr. Farrow: Free up for municipal controls of their land.

Mrs. Stoner: I do not know if you are the appropriate gentleman to ask about that but, if and when any such request comes in, I would certainly appreciate notification.

Mr. Chairman: Are there any other committee members with a question? I have one that arises from all the other discussion. I am wondering whether the ministry has any written policy directive or standard operating procedure to consult with municipalities or other members of the public, to let people know what you are contemplating by way of regulation under the ministry, under any aspect of the Planning Act or anything else.

Mr. Farrow: Do we let them know in advance?

Mr. Chairman: Are there any policies for letting them know in advance? Or a standard operating procedure?



Mr. Farrow: It depends on how the process is and for what purpose it is being enacted. I think in the case of Toyota, for instance, that was discussed with the municipality, discussed with the region, discussed with various people, to make sure they concurred in what we were doing.

In the olden days--I am not sure how long ago that was--when we were involved in trying to stop shopping centres from popping outside of various little towns and urban communities, we did not let people know in advance, because if a building permit had been issued prior to our order coming into effect, then our order was meaningless. There are certain circumstances when we do not want people to know what we are proposing to do until after we have done it.

That is the reason the act is spelled out, to allow us to give notice after the fact, and the order comes into effect at 12:01 the day of its signing, in the morning of its signing. It can be backed up almost 24 hours retroactively.

The idea is that we can come in and put on certain controls. If we have some concerns that something might happen that we do not want to happen, it would not make a lot of sense for us to go out and give notice of this so that the people can then start doing what we do not want them to do and they are not affected by our order.

Mr. Chairman: Is the determination of whether somebody deserves notice before you act an ad hoc one?

Mr. Farrow: It is very seldom that we put on zoning orders, other than where we are being asked to in the north. In the north we are putting the order on as a matter of course and people all know in advance that a subdivision has gone through. In the south, on the parkway belt or in the Niagara Escarpment Act, those are areas we have been talking about and negotiating with.

Outside there, as I say, the orders that have recently been put on have been put on to assist the government to achieve a goal and the municipalities have been asked and consulted and our minister, before he will put it on, made very clear that he had government cabinet support for what was happening.

In the very odd case that we might go in and put something on to stop something, I would suggest that our minister would consult with some of his colleagues. It is not something that is done loosely or by just saying, "Well, we're going to put a zoning order on here." It is done only in cases where we think the provincial interest will be adversely affected.

It would be done in a case such as when we thought the second silo was going up at Chatham. We went into that township and very quickly put a zoning order on. It was discussed. The Minister of Transportation and Communications at that time, I am sure, was aware of what we were doing. He was involved in the airport. We went and put it on but we had no communication with the local municipality.

Mr. Chairman: I do not want to be unfair to you but I take it that is a detailed way of saying yes, it is ad hoc.

Mr. Farrow: It is ad hoc, yes.

Mr. McCague: Except that I think the question is a matter of notice,

and that is something we have been dealing with here, and other matters. Most of the minister's orders are the result of a process. Whether it is the Niagara Escarpment, whether it is the parkway belt, whether it is Nottawasaga, it is a process where I think the answer is, yes, the property owners are notified through that process, not necessarily by the ministry but through the initiating process. Is that not correct?

Mr. Farrow: Yes, that is what I mentioned. Most of our orders are put on as part of--say we want to plan a subdivision, for instance, where we have processed a plan of subdivision, it has been circulated and everybody who is involved has commented on it and it is now ready to be approved but before we give final approval we want some language control on it. We will impose that order.

Mr. McCague: Other than the ad hocery that I suggest you need on occasion, you do in fact have a good circulation process, whether it is the ministries or the other co-operating bodies.

Mr. Farrow: The ad hoc ones are not ad hoc when we are putting them on. I mean, they are, the minister has the right to decide that he will do something, but in the cases that he has acted on he has received the concurrence of a number of his colleagues and we were, in his opinion, after this consultation, looking out for a provincial interest.

I think it is important that this ability to act quickly is maintained, because if in fact we find out something that needs to be done, it can be done quickly and then talked about later. If it is the wrong thing, it can be as quickly taken off as it was put on.

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Pickering is an example. Had we had a lot of discussion about what we might do around an airport and let people know that within a month we were going to put on some controls, if they could have got building permits or could have got started within that month, we would have had no control over those specific areas.

While there is no appeal to this order that goes on, the effective appeal is the right of everyone to ask for an amendment. It is very difficult for the minister to refuse at least an Ontario Municipal Board hearing on a requested amendment to a zoning order. There is in effect an appeal, but it is not, in a sense, spelled out in the act as an appeal from the order. It is the opportunity to ask for an amendment.

Mr. Dekany: We have heard that in other jurisdictions, notably Canada at the federal level and Quebec, all regulations must be prepublished in draft form and an opportunity must be given to members of the public to comment. The comment periods vary: 45 days, 30 days. In your view, as far as your ministry's regulations go, would such a system in Ontario be useful to the public, as long as there were safeguards for certain regulations that you did not want to have prepublished for confidentiality reasons, as you have already mentioned?

Mr. Farrow: Yes, provided there are those safeguards you refer to, because in all except those, where we want the safeguards, we do have a means of publicizing them. They are publicly discussed; the Toyota plant, for instance.

Mr. Dekany: When I say prepublished, in the other jurisdictions it is in the equivalent of our Ontario Gazette.



Mr. Farrow: Again, as long as there could be a very quick process of deciding those that are confidential and it would not end us up in court with someone saying, "You didn't notify when you should have notified us."

The way we have operated under our present legislation, in our opinion nobody's rights are being trampled, because there is the opportunity for him to request an amendment, which could be an amendment, or to request that it be deleted from the order, which is in effect an appeal. As long as we could have that assurance that we could act when we had to act, I do not think we would mind it even if it were going to be more cost and more problems.

We were talking here earlier of who looks in the Gazette. Somebody, the chairman, I think, read from that paper. As to whether we want to go to a new process to put things in a document that nobody uses at this point in time, I think we would say that as long as there is notification, whether it be a newspaper notification, as we do now after the fact, not before the fact--I do not think we would object to a notification before the fact if it were very clearly spelled out that we do have the right not to have to go to that and that we do not have a long process to go through. While we have not run into any more shopping centre order requests in the last little while, there is nothing to say this would not happen.

Mr. Dekany: You have mentioned that you have notices in newspapers after the fact. Do you have a particular budget? Can you tell us the approximate cost of your public notification voluntarily entered into?

Mr. Farrow: I cannot give you those figures right now, sir. I am sorry. We can. It is part of our communications budget which we have on all of these areas for dealing with zoning orders.

Mr. McCague: To pursue a little bit the question that has just been asked, let us just say, for instance, there was going to be a regulation passed that there could not be any more than one severance off class 1 and class 2 agricultural land in Ontario. That is the kind of thing where I think you would want to give notice--I am sure you would--to the public.

Mr. Farrow: I think there might be a slight reaction.

Mr. McCague: The kind of things that the Ministry of Municipal Affairs is dealing with mostly are the things we talked about before, like the escarpment, the parkway belt, northern Ontario and the Nottawasaga situation. To have any notice in those kinds of situations really does not make any sense because there is notice given to the affected property owners.

What would happen in a riding like mine, and probably down in Cornwall--maybe not so much in Cornwall--but in my area, is if you gave notice, you would have three or four people from Bay Street coming up to the meeting because they were up high on a hill, liked looking at the birds in the trees and did not want to look at anything else at the bottom of the hill, even though it was two miles away; that kind of thing. It would be a nuisance factor more than anything else. If you do not believe that, Mr. Chairman, I will send you up to the next Ontario Hydro transmission line meeting they have up in that country.

Anyway, I think you have to be careful in sending out notice for a lot of the things that ministry does, but if it was something of a more general application to the whole province, fair ball. But you would never get through the process if it required notice any more than the notice that is given by some authority within the system.

Mr. Chairman: I think that probably concludes our questions for you, gentlemen. Mr. Bell and Mr. Farrow, I want to thank you for taking time to provide assistance to the committee. It is most appreciated. We will take it all into account.

Mr. McCague: I wonder if we could get a compilation from the ministry on the kinds of regulations and zoning orders it has because of the discrepancy in the numbers the chairman gave you and the numbers Mr. Bell gave us. I am not sure as a committee--I will say for me personally, I do not quite understand all the regulation-making powers that you have as a ministry. You might document that for us also.

Mr. Chairman: That would be useful. Perhaps that could be co-ordinated with Mr. Kaye, who wrote the report I was quoting from. Is it agreeable?

Mr. Bell: Yes.

Mr. Farrow: One question: As I mentioned, very soon--I am not sure if it is not tomorrow morning; no it is not tomorrow morning--we will be meeting with the Ministry of Consumer and Commercial Relations regarding the federal airport problem, with myself accompanied by people from the Ministry of Transport. What we have talked about here today may be one of the things we should be looking into, a means to allow a simplified form of registration of land use controls or similar types of controls.

Mr. Chairman: Certainly, if we can be informed of any specific solutions that seem to be in the works prior to our finalizing our report, that would be welcome, whatever developments take place.

Mr. Farrow: Conversely, your report might be helpful to us in negotiating with our sister ministry, Consumer and Commercial Relations. It is the kind of thing again--slight digression--that the Ministry of Agriculture and Food, the Ministry of the Environment, the Ministry of Transportation and a few others sometimes like us to put on title, that there is noise, there is this, there is that. That is something which is a very difficult thing to achieve. As I say, other ministries might be thankful if we could arrange for some of those.

Mr. Chairman: We will see whom we can give jobs to, if that helps in the process.

Mr. Ruprecht: We might even establish a special office of liaison.

Mr. Chairman: I have a matter for the committee, just briefly. I have spoken with Mr. McCague briefly about it. I take it he is amenable to a motion I sought this morning to have a request formally made to both the whips and the House leaders to schedule a second committee meeting per week while the session is sitting, starting in April, so that we can deal with regulations in tandem with the private bills; presumably Wednesday afternoons, but that will not totally be up to us to determine. It is really a matter of the House leaders working something out, as I understand it.

Mr. Ruprecht: Could you explain that a bit more, Mr. Chairman? I am not quite sure when you say this has to be worked out in tandem with what is happening in the Legislature. What do you mean?

Mr. Chairman: Currently, what we have is one morning a week where we



can either do private bills or regulations. Given the lineup of private bills, we could be doing private bills all the way through the next session without ever getting back to regulations. These hearings were originally scheduled for three weeks, which would have allowed time to go over everything we had heard and formulate a result that would be our report.

In so far as the scheduling of committees led to our being cut down by a week, there was some discussion between myself and the whip of our party about having another morning or afternoon per week to deal with regulations for at least as long as it took to dispose of the issues that had come up. This was discussed somewhat last week in the committee, both on the record and off.

The targeting, which I guess is the best way to put it, was that by the end of this week, all the evidence would be in. Some members who were involved last week are not here this week. We would perhaps be able to start discussing the kinds of things that ought to be in the report as early as next Wednesday, which is the first morning meeting. But, as I say, private bills are piling up and if we are going to deal with them without delaying all of the applicants indefinitely, it would look like having two sessions a week, for a little while at any rate, would be useful.

Mr. Ruprecht: And all the members agreed to that?

Mr. Lupusella: Of course; it is fair.

Mr. Ruprecht: I just think that--

Mr. Chairman: That is what the motion is about. If you do not want to agree to it, then you do not vote for it.

Mr. Ruprecht: I think that Mr. McCague, being the former chairman of the cabinet committee, knows that this will go on and on. I am somewhat surprised at Mr. McCague--

Mr. McCague: I am very co-operative.

Mr. Chairman: He is a workhorse. What can we say?

Mr. Ruprecht: The second party? I assume they have agreed as well, that we have had no conflicts?

Mr. Lupusella: We have a majority here.

Mr. Chairman: They are certainly aware of it. The reason I need the motion, I take it, is a formality so that the committee formally is asking for it. As I say, it is still subject to the House leaders agreeing to it.

Mr. McCague: Just for clarification, I presume what you are asking for is permission to sit on Wednesday afternoons until we complete what it is we are doing.

Mr. Chairman: Yes. It is not for ever and ever.

Mr. McCague: It is not to consider regulations beyond--it is not to expand on our work necessarily, but to wrap up what we have done in the past couple of weeks.

Mr. Chairman: That is right. I do not know how quickly we will come

to a consensus on the wording of everything, given the scope we have covered, but whatever period of time it takes.

Mr. McCague: It was Mrs. Stoner's motion this morning, so maybe she wants to do it again.

Mr. Chairman: So moved?

Mrs. Stoner: So moved.

Mr. Chairman: I think I heard a seconder, although I do not know that I require one. All in favour? Opposed? Carried unanimously.

Motion agreed to.

Mr. McCague: Tony is even in favour and he will not be here after today.

Interjection: Which Tony?

Mr. Lupusella: Do you mean Tony Ruprecht?

Interjections.

Mr. Chairman: I think that concludes everything for today. Thank you very much. We will be back at 10 in the morning.

The committee adjourned at 4:04 p.m.





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STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

REGULATORY PROCESS

WEDNESDAY, MARCH 30, 1988

Morning Sitting





STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

CHAIRMAN: Fleet, David (High Park-Swansea L)

VICE-CHAIRMAN: Beer, Charles (York North L)

Cleary, John C. (Cornwall L)

Fawcett, Joan M. (Northumberland L)

McCague, George R. (Simcoe West PC)

Pollock, Jim (Hastings-Peterborough PC)

Pouliot, Gilles (Lake Nipigon NDP)

Ruprecht, Tony (Parkdale L)

Smith, David W. (Lambton L)

Sola, John (Mississauga East L)

Swart, Mel (Welland-Thorold NDP)

Substitutions:

Lupusella, Tony (Dovercourt L) for Mr. Beer

Stoner, Norah (Durham West L) for Mrs. Fawcett

Clerk: Manikel, Tannis

Staff:

Kaye, Philip J., Research Officer, Legislative Research Service

Dekany, Andrew C., Legal Counsel

Witnesses:

From Energy Probe Research Foundation:

Muldoon, Paul, Legal Counsel

From the Alliance of Canadian Travel Associations:

Heifetz, Gerald, Legal Counsel; with Heifetz, Crozier and Schelew

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Wednesday, March 30, 1988

The committee met at 10:05 a.m. in committee room 2.

REGULATORY PROCESS  
(continued)

Mr. Chairman: The agenda today is going to be a little bit different than we had anticipated. The witness scheduled for two o'clock is Mr. Bradley of the Ontario Trucking Association. I understand his office told us this morning that he is not coming. We have no explanation as to why. Consequently Tannis has placed a call to see if it is possible to move the people from the Canadian Bar Association, scheduled for four o'clock, up to noon, assuming that is acceptable to the committee. It will give us the advantage of finishing by approximately 1 p.m. and having the afternoon open, as opposed to having to come back at 4 p.m. We are not in a position to tell you that we can do that for sure. As soon as we learn of it we will tell you.

I understand that the witness at 11 o'clock is not John Kennedy but Gerald Heifetz, legal counsel for the Alliance of Canadian Travel Associations.

We have before us Mr. Paul Muldoon who has also provided a written brief which is now being passed around. Mr. Muldoon is here on behalf of Energy Probe. The procedure we have been following is to allow our witnesses to make presentations. Obviously you have come well prepared for which we are grateful. Following that members of the committee will pose questions.

ENERGY PROBE

Mr. Muldoon: On behalf of Energy Probe I would like to thank the committee for the opportunity to speak on this area. I am a lawyer with Energy Probe. We participate in a number of litigation and law reform efforts. The reform of the Ontario regulatory process is one of the most important issues on our agenda. This morning I will present a number of principles we feel are essential in reform of the Ontario process. I will use the case of environmental protection regulations as a model or a case in point. Although the principles are most compelling for environmental regulations and the process in developing environmental regulations, I think they are equally applicable to all sorts of other regimes within the Ontario regulatory process.

I will briefly go through my submission, not word-for-word, but I will highlight it. I also submitted to the committee a number of publications which I will refer to, but I will not go into any depth in dealing with them. I did want to give you some background to the substance of the submission, just so that the submission is complete and comprehensive.

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It seemed to us that the importance of the regulation-making process is no better illustrated than in the realm of environmental protection. Regulations commonly articulate environmental objectives, criteria, and standards and also the data and testing protocols used in the establishment of those objectives and standards. In addition to the standards, regulations



also, at times, set the requirements for pollution permits. They set the implementation of liability regimes, along with a whole host of substantive issues. Indeed, I think it is fair to say that, as one observes the development of an environmental framework in Ontario, the regulations take on much greater importance.

The legislation--and, indeed, this is true for the Canadian federal situation also--only provides the framework, a legislative framework, and it is the regulations which provide the main impetus of law. So often in the environmental world, we look to the regulations to see what the law is, knowing that the law or the legislation only provides the actual framework.

When you look at this in particular, in the development, formulation and drafting of these regulations, crucial decisions are made by governmental personnel, by government bureaucracies. These decisions are virtually immune, though, from scrutiny or questioning by those who bear the environmental or human health impacts of those decisions--the Ontario public. I want to give you one example.

The development of environmental protection standards, I think, provides the most compelling example. Most often environmental standards define what is an "acceptable" or "safe" level of environmental contamination for Ontario's air, water or land-based resources. But once that level is defined the emission limits are set for industry or other polluters. The question is, how do you define what is acceptable or safe? It is certainly not an exact science. While perhaps grounded in a factual context, such determinations are really policy decisions, based on a whole array of considerations quite distinct and, at times, different from environmental considerations. Because the setting of these standards is a juggling act performed in the hope of trying to weigh and balance different and competing considerations, cost-benefit analysis, risk analysis and all kinds of other methodologies are used to arrive at any given air, water or land-base standard.

Traditionally, the trade-offs made in the attempt to accommodate the competing interests are negotiated between the regulators, which are the governmental agencies and bureaucracies, and the regulated, which is industry or other polluters, or whoever would have a commercial interest, whoever is applying for the permitted standard. Yet those who bear the environmental, and, ultimately, the human health risks of those decisions, the Ontario public, have a very limited--in comparative ways--contribution to the process. The regulators and the risk-makers developed the rules of the game, while those who bear the risks are, for all intents and purposes, excluded from the process.

The general thrust of my submission is that the process has to be opened up. Let us look at the Ontario process in particular, let us look at the other jurisdictions in Canada and the United States and see how we compare, and then let us look at some of the principles which I would ask this committee to seriously consider.

One of the cornerstones of any democracy is the opportunity for those affected by major decisions to be heard. Yet, it seems, almost every day regulations are proclaimed which have neither the benefit of close public scrutiny, nor a test of the information upon which they were based, nor direct feedback by those whom they most affect.

It is our submission that only through public consultation and input, which is effective, equal and fair, can regulations gain in legitimacy and

currency and ultimately become simply stronger, more coherent regulations.

At present, the main body of input for public participation in the Ontario regulation process is through the notice and comment period, but there are a number of deficiencies in the notice and comment period, which I list on page 4. For environmental decision-making, it is very clear what they are. Most important, I think, is that these regulations are based on an inexact science; there is no way to test that inexact science. There is no way to have input. If we do have input, there is no response.

My experience is that quite often we give submissions on a number of regulations. I have worked for a number of organizations. Energy Probe is probably the largest, or one of the largest in Canada, but there are a lot of smaller groups that spend a tremendous amount of energy trying to make coherent, honest submissions. You submit your written material to the agency sponsoring the regulation, and that is the last you hear of it. It is gone in some sort of vast vacuum. You do not know if the submission has been read, you do not know if it has been considered, and a lot of times you do not even know if they received it.

For small organizations this is the dilemma: Do we participate in a process in which we do not know whether we have any impact at all or do our members want us to go and try to find those activities which have an impact? It is a public interest perspective, which is based on the reality that resources are very scarce. Where are you going to allocate resources? I submit that it is becoming, I would think, more and more common for many public interest groups not to take advantage of that notice and comment period for exactly those reasons.

I think that the Ontario process has started to open up in the environmental area. The recent government has shown great sympathy for trying to set up a process to allow public participation upon the release of a proposed regulation. I cite a number of examples. I think three of the most important are the destruction of polychlorinated biphenyls in mobile incinerators; MISA, the municipal-industrial strategy for abatement; and the proposed air quality regulation 308.

Let us look at regulation 308. It is a wonderful start. It is an excellent framework, but it is a policy document, essentially. It gives a range of options which regulation could look at. It is rooted in an inexact science. I would say it is not even a science, because our understanding of toxic chemicals is so limited that those questions are really almost a speculation of what a lot of the data is in there. It is based on a lot of modelling techniques which are extremely complicated, so complicated that they have not even revealed half of them yet, for good reason.

What has been structured is a series of public meetings. The public meeting is a fantastic and, I think, a very admirable attempt to get the public involved, but there were a number of problems along the way. One is notice. I do not have all the people that they did notify, but I think that if you looked through the list, you would notice a few similarities. The first is to the traditional involvement of the constituency, which is a number of the larger groups, and the second is to the vested interests in regulation 308, the air quality regulation, which are industry and other commercial interests such as people who own incinerators, hospitals, those sorts of organizations which are directly affected.

The reason those meetings have been so poorly attended, in my view, is



that the ministry has failed to identify and to convince the common person of the relevancy of that regulation. Why have lung associations not been there? Why have medical associations not been there? Why have other organizations that, if notified or if they understood the implications of that regulation, would have been there, not been there? It is a problem. Maybe it is because the ministry is new at the process, but "notice" cannot mean notice to a very few and select number of groups; it has to be real notice. I will get to my definition of real notice when I look at other jurisdictions.

There is another thing too which I just want to point out and which I will discuss later. In my informal conversations with ministry staff, they are very surprised that these meetings were held all over Ontario and at each meeting, there was a select but fruitful discussion with representatives of the public.

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But there were a number of industrial contingents at every single meeting, saying the exact same thing. They were saying maybe that is not fair. Why should the same industry have the same say at each meeting? The reason is because they are the only ones who can afford to follow the ministry around to each location and give the same spiel, but it happens. They were surprised. I do not think they should have been. I will explain that. This is one of the most compelling reasons we need a more formalized process to get the input in, because you do have vested interests which are competing. It is simply an imbalance of resources to the funnels into the ministry's reception. That is one of the main arguments, but I can get back to that.

Let us look at some of the other jurisdictions to see where to kind of compare when you look at the regulation-making process. Last year, a book of mine, called Cross-Border Litigation: Environmental Rights in the Great Lakes Ecosystem, was published. It was sponsored in part by the Canadian Environmental Law Research Foundation, funded by the Joyce Foundation in Chicago and, in part, by the Ministry of the Environment.

The purpose of this book was to look at the environmental rights and regulation-making processes of all the jurisdictions around the Great Lakes--eight states, two provinces and the two national governments. One of the main focuses was to determine whether or not Canadians can participate in the American process and vice versa, but I think it also gives a reasonable summary of all the processes within the Great Lakes. I think the conclusion that was drawn--even though, obviously, being an author of the report, I cannot say with all degree of confidence--is a balanced conclusion, that the Ontario process is the least accessible, or at least one of the least accessible, as compared to all other jurisdictions.

Mr. Ruprecht: This is Ontario?

Mr. Muldoon: The province of Ontario, compared to eight United States states, the US government and, to a certain degree, Quebec. I think it is unfortunate that the Ontario and Canadian federal processes are very similar in terms of on a qualitative level and in the quantitative level of avenues available to debate the merits of a regulation before it is passed.

Mr. Ruprecht: This goes right across government departments, does it not? It is not confined principally to environmental concerns.

Mr. Muldoon: That is right. I will get into it right now. Believe

me--I am going to make a disclaimer--I am not an advocate of any US system per se. We are discussing process, and there are eight different processes at the state levels in the jurisdictions we have studied. I want to review a few of those processes very briefly. What we are looking at is the process and how those processes work.

By and large, the main model is that they have what they call an Administrative Procedure Act. It is an act or one model statute. That statute varies in each jurisdiction, but it gives the basic common threads. Those common threads--for instance, in Minnesota, when any agency, whether it be the ministry of the environment, ministry of transport and communications or whatever agency, proposes a new regulation, a public hearing may be initiated with respect to that regulation by the ministry itself or by a petitioner. In this instance, any 25 people or more may petition for a public hearing. In this instance, after 25 people have petitioned, it is mandatory.

If you go to Ohio, which is probably the most conservative of all states, especially in the environmental community, but generally too, as soon as any regulation is proposed, a public hearing is mandatory unless there is simply no public--there has to be an objection filed. But once an objection is filed, there is a public hearing.

In other jurisdictions, and this jurisdiction is New York, they have an Administrative Procedure Act. What happens in that instance is that whether or not a public hearing can be initiated is totally dependent upon the enabling statute, but if that statute states that there must be a public hearing or there can be a public hearing, then that statute, the Administrative Procedure Act, will outline what procedures will be used.

Not to name particular other states, but other states also have procedures statutes. The most common one is that there is no mandatory requirement for a public hearing, but a number of people, whether it be five, 25 or 100, depending on what state you are in, can request a public hearing. Then the minister has discretion as to whether or not a public hearing can be held, but it is not an unfettered discretion. He has to have a public hearing unless he considers it not in the public interest, he considers it frivolous or he considers it inappropriate to the circumstances because of the emergency nature of a situation or some other lines. There are certain criteria, and otherwise he would have to have it.

Again, the basis for this is the belief that the regulations impact a broad array of people who have usually been disenfranchised from input into the process. What I am suggesting in the environmental field--and, I suggest, in other fields--is not new.

Before the House at this moment--it has passed second reading--is Bill 13, An Act respecting Environmental Rights in Ontario, which sets up a model of a regulation-making process for the environment. I have submitted some copies to the clerk. It is Bill 13, and I suggest that the committee look at that model. There are a number of important safety valves in it so that we are not going to have public hearings until they come out of our ears, but it requires that when the public interest demands it, a public hearing be instituted. It has a whole series of those sorts of mechanisms.

I have recently written an article for a magazine called Alternatives entitled "The Fight for an Environmental Bill of Rights: Legislating Public Involvement in Environmental Decision-Making," which I also submitted to the clerk, which describes the process and describes the history of it. It



describes the fact that, again, Ontario is one of the few jurisdictions, within the Great Lakes region, at least, that does not have these sorts of rights.

Also, stuff has been written about it for years and years and years. One of the legends and bibles of environmental law is Environment on Trial, written in 1974 and updated in 1978. We have discussed all of this over and over again.

What I would like to do now is briefly conclude with my recommendations, which are found on page 7, the main body of recommendations.

What is notice? Notice should be formalized. It should be disseminated to the widest possible audience.

In looking at the American system, they have not given notice just to newspapers, they have set up registries of people interested in or affected by that regulation, and the notice is automatic. For instance, there are three or four states where if there is any new regulation or rule-making procedure, I will automatically get notice. Anything filed under that I would notice. For example, if another environmental group files a submission, I get notice that that submission is on file. If an industry files any sort of evidence, I get notice of that.

In comparison to our present system, which is the notice and comment period, I would get notice of everyone submitting submissions in that notice and comment period. Then that material is on file at a number of libraries, again, to make information upon which, essentially, that regulation was based public information when it is enacted.

The second principle is that in certain circumstances there should be a right to a public hearing. What are these circumstances? We went through a few models. I am not going to suggest one model, I think it has to be acclimatized to the Ontario system, the Ontario culture, but I would suggest that there should be, in appropriate circumstances, a hearing.

I think regulation 308 is a perfect example of where one ought to have been. The scientific evidence that regulation was based upon is very shaky, not because of the ministry's fault but because our understanding of toxic chemicals is something less than perfect at this time.

It would also give all those affected by that regulation an equal opportunity to be heard. We will not have people following the minister around from each town over and over again. Everyone will get an equal shot at having his views heard and understood.

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Again, there are a number of safety valves. The minister always has discretion. He ultimately is the determiner of what is in the public interest. In terms of time and cost, I think with the amount of money and effort the ministry has spent on the present regulation, we could have had a hearing at equal cost and probably would have been through and done by now.

The other thing with hearings, also, is that they need not be all that formal. Second, I think there is a fallacy that once you have a hearing, you will have hearings ad nauseam. That has not been the experience in the United States with public hearings, nor those limited times when we have had them in

Ontario. It would seem to me that when you deal with environmental groups or any other public interest group, where resources are so limited, you go towards those issues which are of importance and you tackle those issues and you try not to spread yourself too thin. Those regulations which seem reasonable, which are well drafted, which cause no real issue, will probably pass more quickly than they do now.

The third principle is that it is just not enough to have a hearing and notice. There must be some mechanism to let existing regulations be reviewed and to call for the establishment of new regulations. Because of the trend for legislative acts to be frameworks, the frameworks are impotent without regulations. If the ministry is lagging behind in setting those regulations, there has to be some sort of catalytic process.

Again, in the United States, almost every jurisdiction has the right of petition. If it is a petition by any members of the public, depending on which model you use, to ask the ministry to have a new regulation enacted or an existing regulation reviewed, it is up to the minister whether that will happen, but now he is required to consider it. That is the key: He is required to consider that question and he has to respond to that question. It is called accountability, and that is one of the key themes which have been perpetrated in many legal systems: accountability for decisions or lack of decisions.

The implication of the model I am suggesting is that we will have a more open process, that those who are traditionally disenfranchised will have a right to participate in the process, but it will not be at some cost. It will take some time to think about the model, integrate the model into the present system and at least give some thought to who is going to pay for this model. But our experience, looking at the US system, has been that those questions are easy. The cost of it is far outweighed by the benefit accrued through setting up some sort of model such as we have discussed this morning.

Finally, on the format of the regulations, if you look at some of the regulations, I think it is fair to say that they are extremely hard to understand, for the most part. As a lawyer, I spend many hours trying to understand what a regulation is. So on page 9, I put down the recommendations. I think the key is that it simply has to be user-friendly. When you go to any law library in Ontario, what you will see more and more is not lawyers looking at it, but the public: people who want to know the law but cannot afford a lawyer, trying to figure out what the problem is and what the law is on the problem. Invariably, you sit in the library and people come up and ask you, "What the heck does this stuff mean?" It is often embarrassing when I cannot answer it either. It pinpoints the problem.

I know that in many jurisdictions there is a trend to try to simplify regulations and try to make them in simple, clear, concise language, which is probably more of an art than anything. I think those sorts of recommendations deserve consideration, because they are important and they do provide better access for the general public. Thank you very much.

**Mr. Ruprecht:** You had mentioned at the outset of your presentation that many of us in the public, and even some "people in the know," are not very much informed when it comes to identifying chemical substances and, broadly speaking, understanding the nature of the consequences of the chemicals that are being used. It surprises me, therefore, that in your recommendations you are not outlining, unless I did not quite see it in there, the whole issue of intervenor funding.



I remember a few years ago when the issue you had mentioned earlier, polychlorinated biphenyl destruction facilities, was a matter of high concern for many of us, including Pollution Probe. I am not sure about the activities of Energy Probe. What became essentially an issue with many of those who participated in the debate was that they did not understand the nature of the chemicals and therefore were forced to hire some experts in the field who could provide some interpretation as to the chemical substances and the consequences. I am wondering whether you would perhaps expand your recommendations to include intervenor funding. Certainly I would be very much in favour of that issue.

Mr. Muldoon: In fact, they are included; I just did not mention it. There is a recommendation advocating intervenor funding. The environmental bill of rights, which we are supporting, Bill 13, includes the provision for intervenor funding.

Our answer is that it is an essential component, especially in the environmental realm. There are many models of how intervenor funding could work, as you know, whether it is a government program or the government acts essentially as a banker. There is a view that the proponent, whoever is going to benefit by the regulation, perhaps should pay a part. There are lots of models. I totally agree that intervenor funding is an essential component, and certainly it is on Energy Probe's platform, both in these particular proceedings and in our quest to have an environmental bill of rights instituted in Ontario. It is a big component of that.

Mrs. Stoner: Following on the line of the environmental bill of rights, is that in place in any other jurisdiction as a specific bill?

Mr. Muldoon: Yes. The article I submitted describes it in tremendous detail. I will not go into the detail, but in Michigan they have had it since 1970. The interesting thing about Michigan is that it provides incredible rights to the public in terms of not only administrative proceedings such as public hearings dealing with administration or regulation-making, but also the right to sue. It is very, very broad, very expansive. It has been since 1970. It was actually advocated by a large number of groups at that time. One of the most influential groups was the National League of Women Voters, who actually got it off the ground. It has been tremendously successful and it has been a model around the world.

If you look at other jurisdictions, Minnesota has it. New York has a limited one. There is a whole variety of jurisdictions in the United States that have them. In Quebec they have what they call a limited environmental bill of rights. It goes only part-way, but certainly they advocate a partial environmental bill of rights. At the federal level there was one proposed, which is now through committee and second reading at the federal level, the Canadian Environmental Protection Act. My understanding, though, is that the environmental bill of rights will not be included in that bill but may be the subject of separate legislation in the near future.

It is not a new idea. There is a great impetus for it in other jurisdictions, and I think Ontario is now very much interested in it. Bill 13 is a private member's bill from Ruth Grier, but I understand the Ministry of the Environment is interested either in trying to get that through or in having its own bill. I am not sure if there has been a decision on how to do it. Certainly the Minister of the Environment (Mr. Bradley) is committed to an environmental bill of rights. We see our role as that of a catalyst to make sure it gets in there more quickly.

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Mrs. Stoner: If Michigan has a very good environmental bill of rights, how did the Enrico Fermi and the Detroit incinerator get approval?

Mr. Muldoon: In both instances it was nuclear energy--

Mrs. Stoner: Exempted?

Mr. Muldoon: Yes, exempted by federal law.

Mrs. Stoner: OK, that explains Enrico Fermi. It does not explain the other one.

Mr. Muldoon: Actually, it does. Judge Barbara Hackett is a federal court judge who usurped the state court jurisdiction and essentially said that this thing ought to have been under the Clean Air Act and you cannot bypass the Clean Air Act by going to the Michigan Environmental Protection Act. That sets an awful precedent. It is one of those sorts of decisions where you scratch your head at the end, because no one understands it. It is being appealed. A number of Canadian environment groups are very seriously intervening in that. It is bad law, quite frankly. I think it says a lot about the misinterpretation of law rather than the law itself.

In our view, the Michigan Environmental Protection Act does cover that situation and ought to have covered that situation, but it is a jurisdictional problem between federal courts and state courts. State courts, I think, ought to have ruled on that decision and used the Michigan Environmental Protection Act, but the federal court said you could not do it. It is going to the circuit court in Cincinnati on that exact issue of which court had jurisdiction. If it is found that the state court had jurisdiction, the Michigan Environmental Protection Act, which is the environmental bill of rights, will apply, and I think the incinerator will have to be retrofitted or stopped.

Mrs. Stoner: OK. Is Michigan the best example of the public participation process in the regulatory area?

Mr. Muldoon: I think it is the most studied; I am not sure it is the absolute best, but it is the most studied. We know most about it. There have been more empirical studies and scholarly studies on it. That is why it traditionally is the focus. It is the oldest, dating back to 1970. We have a long history of it. I think that is the main reason it is always looked upon as being the model.

Mrs. Stoner: OK. The Canadian understanding of the American system is that they really do not like to be regulated and tend to be limited in that. Have you any idea of the numbers of regulations that go through the state in a year and how many hearings result?

Mr. Muldoon: I do not have the exact numbers for that. In my discussions with people in the United States I can tell you really how it works. It is simply that the environmental community targets a number of the regulations they see coming down the pipeline--not all of them, but some of them. Probably the most controversial one was rule 57, which deals with risk assessment, in which they said that, for certain toxic chemicals, one in one million additional cancer deaths is acceptable and they will gear their standards towards that. It is a new methodology in dealing with toxic



chemicals, but there is a lot of thinking: "How do you get it one in one million? Why should one additional cancer risk be appropriate in this instance and not in that instance?" It was very, very controversial.

On one hand, people said that one of the reasons it got through, such a controversial and polarized issue, was that you had a forum to discuss it in where the environmentalists could bring their case, industry and government could bring their case and it was adjudicated by an impartial body, which then had the issue there, dealt with it and decided, in this case, in favour of accepting the growth. That was it.

Mrs. Stoner: There is no appeal process?

Mr. Muldoon: There is. There are two types of appeal process, just as there are in Ontario, where, if there is a procedural or process error, you go to court. For instance, if the hearing panel did not hear somebody it ought to have heard, or did not consider evidence it ought to have heard, or did something procedurally wrong, or if people just do not like the decision, you appeal to the politicians. They appealed to the politicians, and the politicians said: "You have had your say. Let us get on with regulating the environment."

The environmental community always has a problem accepting bad decisions, as has any constituency. But having a forum there to have the case heard goes a long way. Again, I think in the environmental case, because of the exactitude of the science behind it, a forum is so important.

Mr. Dekany: I would like your views on whether you think a legislative committee would be an appropriate forum for a hearing concerning proposed regulations.

Mr. Muldoon: I gave some thought to that. My view at this point is that dealing with the number of regulations you have to go through, it probably would not be appropriate. I think the role of this committee for the most part would be to keep trying to streamline the process. Do you want to get caught up in a hearing process with every regulation, or at least a number of regulations that would merit hearings? I am not too sure that would be desirable or appropriate for this committee.

Mr. Dekany: I am not specifically referring to this committee, but for example, in its 1987 report entitled Acid Rain in Ontario, the select committee on the environment recommended, among other things, that "following publication of the proposed regulations, public hearings must be held on the proposed regulations by a designated committee of the Legislative Assembly."

Mr. Muldoon: I guess the difference is that hearing would not result in an actual regulation. That is my understanding. The model we are looking at is where there is a hearing panel--it may be a committee, an administrative law judge, the Environmental Assessment Board or whatever mechanism is in place--that comes out with a regulation which is then submitted for political approval. So it is a decision-making process. It comes out with either a very hard decision or some sort of report. Whether or not that is appropriate really depends on the model.

What I envision is the Regulations Act being transformed into the equivalent of what the Administrative Procedure Act is in the United States, whereby they give a model of how these decisions are made. In that model, it may say that certain regulations may be referred to that sort of committee or

may be referred to another sort of committee. I am not sure which is the most appropriate in this instance.

Mr. Dekany: In the United States Administrative Procedure Act, are there different models for different types of regulations, different ministries?

Mr. Muldoon: Yes. The way it works is that the enabling statute, for instance the Clean Water Act or something like that, takes precedence. Whatever is the procedure under the statute governs. But when the statute is silent on the procedure, the Administrative Procedure Act governs. For two statutes, you may have totally different processes, depending on what the statute states. There are a number of models that could be appropriate. That really depends on the statute. It is more or less a fallback. The Administrative Procedure Act is a fallback. If the statute does not state what the process is, you go to the Administrative Procedure Act.

Mr. Dekany: In some of our jurisdictions, particularly at the federal level and also in Quebec, there is a system of prepublishing draft regulations for every regulation. To your knowledge, is there such a system in any of the states of United States?

Mr. Muldoon: No. As far as I know, the proposed regulation is published and given notice and there is a comment period. During that comment period, people have the right to comment and to petition for a public hearing. The agency then has the option of having a public meeting. There is a whole series of these in a hierarchical fashion: a public meeting, a public information session and a public hearing. I think there is even one above that. There are all degrees of formality, so you can just have a public hearing and information session all the way up to an actual public hearing with intervenor funding and the whole gamut of procedural rights and opportunities. Again, that is at the discretion of the agency.

Mr. Dekany: Can it be said that there is a requirement for publication of the draft regulation in all cases?

Mr. Muldoon: Yes, in all cases in that context, as far as I know--at least in the jurisdictions I know of.

Mr. Dekany: Would you be in favour of prepublication of draft regulations in Ontario?

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Mr. Muldoon: Absolutely. I think it just makes good sense. Having that sort of prepublication alerts the agencies to what the viewpoints are of all those interested in that regulation. For groups to honestly participate in the process, they have to feel that their voice is being heard; perhaps not accepted, but certainly heard. By having a prepublication document in front of you, I think there is a greater sense that it is possible to influence how that regulation will be developed and eventually implemented.

Mr. Dekany: You have a number of recommendations on page 9 of your paper. Do you have any estimates of the costs of any of those recommendations? I will put it another way. There are a number of recommendations and obviously they all involve costs. Do you have any priority list of which ones you would like to see implemented first, given a limited budget?



Mr. Muldoon: It is not to go back and rewrite all regulations. It is simply to have a policy on new regulations coming out with probably a new format. It would not be necessary to go back and do the whole thing all over again. I think the most important one would actually be the dissemination of the regulations themselves, making sure people understand which regulations are coming down the pipeline, so to speak.

Mr. Dekany: Do you mean the indexing or do you mean advance notice?

Mr. Muldoon: I think I meant both, but advance notice, I suspect, would be more important at this point. These are expensive. There is a cost associated with them. But again, the benefit accruing from them is so great that I think it is well justified.

Mr. Kaye: One of the models the committee has been looking at is the federal model based on administrative practices with the federal regulatory plan and the prepublication of regulations that counsel has just mentioned. How would you assess the kind of consultation that is taking place at the federal level with respect to the federal regulatory plan when environmental regulations are included there, and also the prepublication of environmental regulations in the Canada Gazette?

Mr. Muldoon: I will address the first part of your question first, dealing with the consultation process. I have been involved in three or four consultation processes at the federal level. They have been really good attempts to learn how to get people involved in law reform. I think it is crucial and I certainly commend the federal process as a first-start effort, but there are a number of weaknesses with it.

One of the main weaknesses is that we have a heck of a time trying to get our view and resources mustered to compete with all the other competing interests. Second, we do not know who makes the decisions. In other words, we do not know where the leverage points are.

The consultation process, at least with the Canadian environment protection act, was that everybody got around in a room together, discussed a bunch of recommendations which were amendments to the draft law and draft regulations, sent them away and we never heard of them again. We spent weeks preparing for it, days negotiating and we never heard of those again. It is a problem. Essentially, all the participants were there but there was no forum. We did not know who was calling the shots or what our efforts were directed towards.

Mr. Chairman: I have a number of questions. First, you indicated a number of times that you make comparisons with eight American states. I deduce that at the very least that includes Michigan, Ohio and New York. I wonder if you could indicate what the other states were.

Mr. Muldoon: Pennsylvania and Wisconsin. Good question. How many have I got now?

Mr. Chairman: Five.

Mr. Muldoon: It is all the eight states surrounding the Great Lakes. Minnesota.

Mr. Dekany: Illinois?

Mr. Muldoon: Illinois. You are a better geographer than I am. What are we up to?

Mr. Ruprecht: New York?

Mr. Muldoon: We have New York, Ohio, Pennsylvania. Wisconsin?

Mr. Chairman: We have that. We have seven.

Mr. Muldoon: Oh, Indiana. Then it is Quebec, Ontario and the two national governments.

Mr. Chairman: OK. On page 4, you set out a number of deficiencies from the usual notice and comment process, at least as it may exist on occasion in Canada, and have advocated that certain goals be reached or attempted to overcome the deficiencies. I want to get your understanding amplified a little on things like the disclosure of the basis for which a regulation is made, which really ties into publication of the reasons as to why some comments were not adopted. Why is it in the public interest that the reasoning be made public?

Mr. Muldoon: Do you mean the basis for the regulation? Let us pick an environmental standard, for instance. Is that appropriate?

Mr. Chairman: That is fine; any example you like.

Mr. Muldoon: If we take an environmental standard, the point of the environmental standard is how that information is tested. Let us take, for instance, the water standard. Traditionally, for the creation of a water standard, you put a chemical in an aquarium. If 50 per cent of the fish die within 24 hours, that is an LD-50, lethal dose 50 per cent. Anything below that standard is acceptable and that is the standard. It is very simplified, and perhaps not fair, but that is a standard. Many people will say: "Wait a sec. That is not the way you base a standard. If that is the way you based it, let us challenge it."

At least in the past, challenging that sort of information is crucial, and honest debate on the merits of that standard. If you do not have that information, then how can you debate a standard, how can you comment on a standard? All a standard is is a number. How did you get that number? Is that number based on 1980s data or 1960s data? That we do not know and that we must know to provide an honest debate on the acceptability of a standard.

The ethical question, of course, the reason it is important, is because the regulators and the regulated traditionally have negotiated that standard. "This number is going to cost that much more, so let us lower it down and it is acceptable." The problem is of course that the people who bear the risk of that standard want a say in the process. They want to see how that number is based, to see if it is acceptable. Traditionally, not all the time, but many times, that was not available.

Mr. Chairman: In many circumstances, would the discussion of those issues not involve inherent trade secrets in any given industry?

Mr. Muldoon: Yes, and there is a regime of law that deals with trade secrets. It is a sensitive issue. It is one we have to deal with with great sensitivity because of the commercial interest involved. At the federal level,



they have a system which is not perfect but which has been worked through. I suggest that at the provincial level it is the same situation.

But for instance, in dealing with a chemical, if an industry cannot disclose the information it has on that chemical to satisfy that the chemical will not cause significant, material, adverse harm to people's environment, certainly the public has a right to know that information. If it cannot be done through an open process, surely some process can be created to accommodate those concerns. That problem in a sense is a red herring. I think all sides recognize that this is a sensitive area and has to be dealt with in a sensitive manner, but that is not to say that should bar any sort of participatory process.

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Mr. Chairman: How do you deal with the problem of having virtually inevitable distortions of information through the media when it reaches fairly technical subject matter? It can be environmental. It can be technical, matters of, say, industrial safety. It may be issues of trade, which is very topical these days, where it is almost inevitable that the process of simplifying a day's material to make a single headline can thoroughly distort whatever the message is. How do you cope with that problem?

Mr. Muldoon: At Energy Probe, we deal with a lot of energy matters and energy matters tend to be very complex too. What we are finding is that the more they are exposed to the media and the public and the more they are debating in open forums, the press becomes sensitized and educated towards the issues, and the reporting becomes less sensational and more substantive. It is only that we have had so few opportunities to debate these real issues that they become in many ways a media event. The more they become open, the more they become accessible, the more the sensitization process occurs, so I think that will become less of a concern.

In the judicial process, we had a real problem, and still do, to try to get the judiciary sensitized to our concerns. It takes time. It is a new process for everyone. I think it is a concern, but I think it eventually matures to a point where the degree of worry is less.

Mr. Chairman: Do you have any information about the costs of any of these recommendations you are making? We might start, for instance, with the recommendation for establishing a registry.

Mr. Muldoon: No, I have no cost estimates specifically and I know of no studies that specifically have these sorts of cost estimates. What I would suggest is to compare, for instance, the cost of the consultation process for regulation 308 and put that beside an estimate of what I would be suggesting, and I cannot give you quantitative or exact terms. My submission is that the cost differences would not be great.

Mr. McCague: I want to ask Mr. Muldoon if he is aware of the model that the Ministry of Labour is working on with concerned parties or with the public.

Mr. Chairman: You just took my question.

Mr. McCague: Sorry about that, Mr. Chairman. Are you aware of the

model the Ministry of Labour has introduced to address the regulation-making consultation, if you want to put it that way?

Mr. Muldoon: I am afraid I am not.

Mr. McCague: I have seen it only once myself, but maybe Mr. Dekany can outline what they have done, just to get your comments as to whether this might not be a good initial step, at least, for the environmental groups.

Mr. Chairman: While Mr. Dekany is trying to locate materials we have received from the Labour people, I am wondering also about the registry, whether there has been any danger or any problem in practice in the American states that have a registry with a kind of public overloading on the registry, where a group or an individual advocates that everybody in a neighbourhood write in and demand notice, and 10,000 names later, the ministry has an indefinite problem of trying to give notice to 10,000 people every time it does anything, even if it is not really related to the neighbourhood that may be concerned about some specific problem.

Mr. Muldoon: That certainly is a concern. Usually what happens is that notice is not given. For everything to do with the environment, it would not be given to all the people who have put their name on the registry. Usually the way it is done is on a questionnaire form. What topics are you interested in or do you work in or have some sort of affiliation with? Then, only notice dealing with those subject areas would be sent to those people.

It is subject to abuse and it does create paperwork. On the other hand, I think the alternative would be a trend to what happened with regulation 308, where you have an honest attempt to have a lot of meetings, a lot of public consultation: Industry was there, a number of students were there and the ministry was there, but people who were going to be directly affected by that regulation were not there. I think the registry is one concrete example of how to overcome that.

Putting a \$3,000 ad in the paper saying, "Come to a public meeting on regulation 308," is not going to spur public interest. Having a letter sent to you saying, "Look, there is a new regulation dealing with air quality. These air quality systems are very important because of (a), (b), (c) and (d)," will spark the interest of people who potentially or really would be affected by air pollution.

Mr. Chairman: I am wondering whether, in a lot of areas, you are never going to have members of the public interested unless they have a sense that it really is their neighbourhood. It is just too abstract, whether it is the environment or consumer protection legislation. I am wondering whether hearings, in all but unusual circumstances, would ever be justified as a practical matter; not as a matter of "Wouldn't it be ideal?" but as a practical matter of who is ever going to show up.

Mr. Muldoon: I think that is the exact argument in favour of my model, the fact that you will not have hearings all over the place. You will only have them in areas where it is really crucial, really important, really meaningful and in which public debate must be held.

In that instance, you have a model whereby that process could be triggered in a streamlined fashion, the rules set in a fair and equitable manner. Now, it has to go through a special procedure and decisions have to be made about who is going to be invited, what sort of forum, who is going to be



on the panel. Every single panel is different or every single model is different. Not only do I have to complain that we do not have a public forum: It has to be, "Which kind of public forum?" The one for polychlorinated biphenyls is different from the one for regulation 308 and from the one for the municipal-industrial strategy for abatement.

I think that is not right either. What I am suggesting is a model which is in place so that, in those very few situations where a public hearing or another kind of consultation process is appropriate, it is there. The rules are set and everybody plays by the same rules. That way, whether it is industry, public interest groups or the public, everybody is clear what the rules are: Take it or leave it, that is the process.

Mr. Chairman: I am just not clear on who you are recommending should trigger the process. Are you saying the minister should trigger it? Are you saying the Legislature should trigger it? Should a field director be able to trigger it in a given ministry?

Mr. Muldoon: I think the system I have seen work most appropriately, and there are a number of ways it can be done, is that the agents proposing the regulation have the opportunity to trigger it or one or a group of people have the opportunity to trigger it, but there is a safety valve. That safety valve is the discretion of the minister who is proposing the regulation, but it is not unfettered discretion.

The discretion can only be whether the minister does not believe it to be in the public interest, in other words, that this is a hollow petition or is a frivolous or vexatious request or there is some other--if it is emergency regulation, it has to get out--those sort of considerations. Ultimately, it is the minister's discretion, but anybody can trigger the public hearing.

This is not a new process. With the Environmental Assessment Act, essentially that is what it is. Once the environmental assessment documents have been released to the public, I can just say, "I want a public hearing." The minister then decides whether one is appropriate. That seems to be a fair way to do it. The discretion is there, but the process is there too. Once it is triggered, then the rules are clear.

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Mr. Dekany: Following up on Mr. McCague's question concerning the model used at the Ministry of Labour, we have heard evidence that in the development of regulations for designated substances, the Labour ministry has recently accepted the principle of a bipartite committee consisting of labour and industry to develop and review regulations for toxic substances.

Very briefly, the way it works is that the minister has appointed members of a joint steering committee on hazardous substances in the workplace, and that committee is composed of nine members of labour and nine employer members and is chaired by a ministry official. The primary objective is to develop and review regulations for hazardous substances, and it also has certain secondary objectives.

What we have been presented with is a flow chart of the actual steps in the development of regulations. It is a fairly complicated one but it starts with the establishment of a joint task force; background studies; publications of an intent to regulate; preparation of draft regulations; public meetings; comments; if there are changes of a major nature, going back to the public

meeting and comment procedure; recommending a final draft to the minister, and then going to cabinet.

I think the essence of Mr. McCague's question is the notion that this is a bipartite committee. I think that is what you are being asked to respond to, whether that would be appropriate in the environment field.

Mr. Muldoon: I have a few comments. I am not sure if it is a good idea to have a different process under every single ministry. I like the idea that you have one process. The question is, can that be applied to any ministry for the development of regulations? In developing those regulations, it may be appropriate for the ministry to have that sort of bipartite committee.

For the environment, I think it is a good thing to discuss. I have not thought it all the way through. One of the problems, particularly in the environment, is who are going to be the industrial representatives and how are they appointed?

Certainly I like the model, the flow chart, in the sense that it provides rules of the game which are clear, predictable and provide access for real comment and real participation. With public meetings, my only question is, will there be an opportunity to present evidence there? I do not mean evidence in a judicial way, but information that may question or add an alternative approach to the basis of the regulation, to the information upon which the regulation was based.

In the environmental field, I think that is crucial but I can also see it in the transportation field, those feasibility studies on roads and traffic flows and accidents and spills. All that is technical stuff and there ought to be some mechanism for impartial review of that in appropriate situations. That is my only caveat on that flow-chart mechanism.

Mr. Dekany: But the ultimate decision would be the decision by the minister.

Mr. Muldoon: Yes.

Mr. Dekany: And you are seeing the review body as being quasi-judicial and giving some kinds of reasons and receiving a reasoned input, really bringing to a focus the whole public consultation process.

Mr. Muldoon: The model that I have discussed in general is not, I do not think, different in principle from that model.

I think the ultimate decision for a regulation has to be with cabinet, but you need also some other sort of process to test the evidence and to report on the adequacy of that regulation before it gets to cabinet. I am not sure I am making myself clear.

Mr. McCague: Probably the clerk would get you a copy of the submission that they made to us. It seems to me that a lot of the questions that you would like to ask in a public meeting may be better asked in a meeting of 18 people, in a balanced setting, where you can get the answers much more readily than you can at a public meeting.

I would ask that you take a look at that and you might, within the next couple of weeks, write us a note on what you think about the way they have set



this up. Mind you, it is in its formative stages, but it seems to me that there is representation there from the interested party, where it probably can be done more thoroughly. I guess that is what I am saying.

Mr. Muldoon: I would be very pleased to do that. Thank you.

Mr. Chairman: There being no further questions, Mr. Muldoon, I would like to thank you very much on behalf of everybody on the committee. It was an excellent presentation with a lot of good ideas which, without your presence, we might not have been able to consider. I appreciate very much the effort you have taken to provide assistance to the committee.

Mr. Muldoon: Thank you very much. It was a pleasure speaking to you this morning.

Mr. Chairman: Our next witness is Gerald Heifetz, who is the legal counsel to the Alliance of Canadian Travel Associations. As Mr. Heifetz is getting settled, I might advise members of the committee that the representatives from the Canadian Bar Association are not available until their regularly scheduled time at four o'clock.

Mr. McCague: They are at the bar until four, are they?

Mr. Chairman: Evidently. Members of the committee may want to join them. In any event, we will have to return here for four o'clock.

Mr. Ruprecht: So instead of two, it is now four.

Mr. Chairman: I am sure we will keep every seat warm for everybody to come back.

Mr. Ruprecht: I was asking whether that means that we do not come back at two, but at four.

Mr. Chairman: That is correct. The scheduled witness was Mr. Bradley from the Ontario Trucking Association, and his office cancelled his appearance this morning with no apparent explanation.

Mr. Ruprecht: Just one question while we are at this: That was this morning, but what about the two o'clock meeting that was originally scheduled?

Mr. Chairman: That was Mr. Bradley.

Mr. Ruprecht: Oh, that was at two. He was supposed to be here for two hours?

Mr. Chairman: Some witnesses go for one hour, some for longer.

Mr. Ruprecht: Thank you, that clears it up.

Mr. Chairman: Mr. Heifetz.

Mr. Heifetz: Good day, sir, gentlemen and ladies. Do you want me to start?

Mr. Chairman: What we have been doing is inviting each witness to make whatever comments seem appropriate from his perspective. We are obviously interested in many aspects of the regulatory process, so you can tell us about

any part you think is relevant and, following that, I am sure the members will have questions.

# ALLIANCE OF CANADIAN TRAVEL ASSOCIATIONS

Mr. Heifetz: I have new glasses and I can never decide whether I can talk with my glasses or without. I am sure you remember your new glasses. I will take them off.

I was not prepared, but I am prepared for this session. I was not prepared because I thought it was one of these innumerable meetings, not of the legislative group, but of the lobby groups that sit around a table debating all kinds of matters that never really get heard or seen. I have done so much of that that I really came in cool to sit back and listen to the arguing around the table, to the innumerable studies of studies that go on for ever. Instead, I find myself before a group of MPPs who have power and glory.

The next question is, how much do I tell you? Do I tell you the truth of the travel industry's plight or do I be very careful and protect myself through our current lobbying position? Being myself an independent, I will give you as much information as might be useful to you for your purposes.

Mr. Chairman: Anything that relates to the process of regulation.

Mr. Heifetz: God knows I know your purposes. I have participated over the years in these types of studies in the federal domain when the Department of Transport was trying to seek its soul, trying to develop how far you go in federal legislation and how far you do not go. This went around in circles for years and years as federal transportation policy was being hammered out before deregulation when they decided they should not have a policy. You may find little bits of sarcasm coming in my comments, but they are good-humoured. Sarcasm is the process.

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Yes, I do have and our association has very strong feelings and views and understandings about legislation and about regulation.

I was the counsel who drafted an embryo bill for the Conservative government in 1974 that eventually saw light and became the Travel Industry Act of Ontario. I was the moving force as a lawyer behind causing the government to take an interest in regulating travel companies. I and others were also the moving force that brought the compensation fund to the Ontario public. We brought the compensation fund to the government; it was not the government that brought the compensation fund to you. We brought it along; we begged for it. We begged for an act and then we said: "Give us an act. We will give you a fund."

In 1975, we got the act but we got it in three readings over three weeks, without any opportunity to see what the text would be. We exploded. You are not all old enough--maybe one or two of you are--to know that, in 1974, members of the travel industry for the one and only time came together in an explosion of anger. Out of that anger we formed a trade association that eventually became a national association and we built a lobby group, because there were three readings in two weeks of a bill without proper discussion in the Legislature.

The bill was good. There was nothing wrong with the bill, but, as usual,



there were a few little bad things, a few little hasty things that were thrown in that have plagued us ever since. It is always the question of those few little things that unnerve an industry because 99 per cent of things are commonplace and 99 per cent of things are logical.

We fought the battle with government and then we made eternal peace for one year. Then Mr. Handleman at that time--I do not mind naming names because they are all historical--decided under one bankruptcy that he wanted to award agents the right to claim against the fund as well as the public. He felt that was just and equitable but he did not want to change the law so that it would take place for all. He just wanted to do it in that moment for that time.

So we fought battle number two and we went to the barricades with the government. We sought legal opinion on how to attack the government and so forth. There was a violent explosion once more but it was peacefully settled and, in 1976, there was the last war between the travel industry and the Ontario government. From 1976 to 1988, there has been peace.

I have been privileged to work with the Ontario government, with the ministry under different political parties, primarily with the civil service, and we have had a lovely relationship. Everything has been fair and aboveboard. The industry has had a good lobby group and we have learned how to deal with regulations, that is, to work it out with the civil service.

Essentially, the ideal circumstance is an intelligent civil service attuned to the public interest, which it is supposed to be, attuned to the industry interest, which it is supposed to be, dealing with responsible lobby groups and anybody else who wants to lobby, but dealing primarily with responsible lobby groups, trying to figure out what the government should do. That is essentially what it is, an exercise in logic.

If the ministry officials are under correct procedures and the lobby groups are doing a job for the industry and the public interest is protected, the regulations will be intelligent and, therefore, the government will enact the regulations. The least hassle and the least trouble caused to the government is in the best interests of speedy regulations. That has been the history.

So what happens? We spent innumerable time in the past working out the regulations with the ministry. The ministry has been very careful about its political effect and the regulations have been very delayed in coming out for political reasons, not because the government does not have the authority but because it is going to be damned sure when they have been passed.

It was almost like the industry chasing the government to push the regulations through quicker in the past than the opposite. We would be more concerned probably about total authority to the government to pass regulations with minimal comment. Why? Because this was an industry that got along very well with the government and the civil service. People who lobby before you or give information favour maximum authority to government to regulate quickly if they are very comfortable with their lobby position, with the government authority that has that absolute authority.

In other words, if I am a good lobby group dealing with a civil service that I am comfortable with, under a ministry that is attuned to my interest, I say give them maximum power. But if I am a lobby group with minimal power or I am concerned about the direction of government and I want the maximum openness, then I attack almost everything that is presently being done in regulations.

Oddly enough, my association is right in the middle today on a real, practical problem that I can bring to your attention.

We have just had regulations passed, as you may or may not know--you must know--on February 17, I believe. The Minister of Consumer and Commercial Relations (Mr. Wrye) brought out a series of regulations that were very highly publicized, because of some very highly publicized Christmas mishaps, we call them, that the Toronto Sun exploded on to the world on December 31. The Sun had front-page and second-page and third-page stories on one incident, at one hotel, on one tour. From that, the minister, within 24 hours, chose, in his own intelligence, to make a statement in the House that he was going to pass regulations to cure this problem. That statement was made very quickly after the incident.

At the same time, the industry had been working to bring out its own recommended practices. We had been developing a code of ethics or standards for the industry that was not necessarily enforceable by law but would be printed and established for the courts, for anybody who wanted to use it, as the established code of practice of the industry.

We were trying to get the industry moving on a logical basis into quality control. We knew it had to move into better quality control, but you could not move them overnight into being guarantors of quality in travel. You can use your imagination. Nobody can guarantee quality control in travel. You can move people into a more responsible position in their advertising and in their checking out destinations, but you cannot totally control it because travel has an international component and so forth. I will not bore you with all the arguments.

As an association, we were very much concerned that service had been falling in travel. Deregulation and a lot of other matters have brought service into a minor focus and bargain prices into a major focus. You really cannot have bargain prices without some falling down of service, so the pendulum is now swinging back because we want more service, but how can an industry overnight do all these swings, go from bargains to service, without being trained, without being educated, without a number of things?

Our industry association is totally in favour of more rules, of more professionalism and of moving the industry, but on a logical basis, not by edicts that are written in three weeks. Although 80 per cent of it is legitimate and follows what we wanted, 20 per cent is frightening.

What do I mean by frightening? The new regulations say that the travel agent is required by law, by regulation, to explain the customs and laws as well as the passport requirements of all countries he sends people to--the customs and laws. The registrar's office may not enforce that, but what will a judge say when you do not tell a client about the liquor laws in Saudi Arabia, to use an example? The regulation says the customs and laws, the travel agent must inform all passengers of customs and laws as well as documentation. Of course for documentation he must inform, in writing, each person travelling.

That means if you book for eight people, now, by law, all eight people must be advised in writing. It is logical, but what paperwork. What a heavy thing in all the telephone business. You can say, "Well, shouldn't agents do that?" but can agents necessarily do all these things?

A lot of the rules are well written for the Caribbean package holiday, but by law they cover international travel of all kinds. You get one



aberration, for example; a travel agent must give a receipt with 11 components in it. It may be logical, but if that same consumer chooses to go directly to an airline, to buy an Air Canada direct flight or interline flight, the airline is not regulated under that service. So a consumer gets a double standard and the agency has much more paperwork. His costs--

Without prolonging the technical details, the analysis of this language by an intelligent industry lobby group, and a consumer group, in this particular instance would have protected us from a lot of language that is very hurtful.

We do not believe the minister had wrong purposes. We have not taken this minister on. The Ontario branch of the Alliance of Canadian Travel Associations is very careful. We do not want to take on and get into heat, because that is not the process that works. We will quietly lobby with the ministry to get words changed, but certainly this is one real example where you had no time. We were not even allowed the privileges that you get from open discussion. In most other cases we would have been glad to have it closed because we would have got our way or felt we got our way, but this is one case we did not. I will give some comments specifically to your questions, but I am trying to illustrate the reality of this thing. It is not a theoretical problem to us.

1130

The next thing is how hard their lobby group argues with the ministry. There is a limited amount of arguing you do and then you are in tough luck, particularly if your members are always split. Most trade associations, whether they are in real estate or insurance, have a split membership that thinks everything from A to Z, black to white, do not necessarily love their trade association. It is not the easiest thing to say you speak for a whole constituency when that constituency itself may be split, and therefore you have to tread a very, very even path in co-operating with government, being as intelligent as you can, not being too aggressive and not being too servile

Therefore, somewhere in the middle of our problems is answering your questions: How much do we want of openness? How many processes do we want to see when regulations are passed? We have the processes on legislation. The question is how much of that do we want to apply to regulation. I understand your questions address that issue directly. I will take a breath of air.

Mr. Chairman: I have some questions. I guess I am not entirely sure what your position would be with respect to a notice and comment procedure, whether you think in the long run you would be better off if there was a greater element of notice and comment or whether you prefer to have a situation where the minister or the ministry, as a practical matter, can move quickly but not necessarily are they obligated to consult with the industry. Would you prefer one where they are obligated to consult in a more formal way but they may have to proceed more slowly?

Mr. Heifetz: I will answer you. I will tell you what my personal view is and then I will hedge it a bit for my trade association since I have not been authorized to give an opinion on it.

Mr. Chairman: Fair enough.

Mr. Heifetz: On balance, I would go for an open process where any regulatory change had to be made public, so we do not put regulatory change

through without it being open. I do not like the idea of going through a regulatory process where you are not entitled by law a priori to see in writing what they are doing and commenting on it. The present thing is it is given to you as a favour. The lobby group only says: "If you are good, kind and sweet, we will let you look at what we might be doing but we won't show you the final draft. You will read about it in the papers." That is the process right now.

We found language coming in after we had given our opinion, that was not there when we were giving our opinion. I think I have to--and my trade association would undoubtedly agree with me--opt for any regulatory change being made open and an opportunity to comment at least be provided. I would shorten the time elements. I might not open it too wide and allow for undue delay or a call for public meetings, but I would say it had to be made open, interested parties had to be made aware of it and a time period, for at least responding, would have to be provided. That is my answer.

Mr. Chairman: It has been suggested earlier this morning by the witness that we had on behalf of Energy Probe that the regulatory process would inevitably, produce better quality regulations when there is greater openness, including in his advocacy, public hearings on at least major regulations. In fairness he was talking in the context of the environment, in particular, but he was making a general assertion as well. Would you favour a consultative process that would have public hearings?

Mr. Heifetz: It depends upon the amount of regulation. If you are talking about a simplistic change--something that does not really jar the sense of what the regulation was before, that might be too elaborate. If it was something that substantially changes what exists, I would say yes. I do not know how to make that dividing line.

The regulations that were changed in the Travel Industry Act three weeks ago were major. They were of deep substance. They really should have been legislative changes, and I understand there may be a legal challenge. There are rumors of a legal challenge as to whether it came beyond the enabling legislation's powers. That is major, but a lot of changes that have come through are just housekeeping. They do not deserve that type of attention.

Mr. Chairman: Do you prefer to work with the civil servants in the ministry, or would it be a better process if, in one form or another, legislative committees were involved in the process of regulation--

Mr. Heifetz: I am quite clear on that. I think the ideal circumstance is working with the civil servants. What there has to be is a legitimate and real appeal process to somebody, whether it is your committee or some committee. There must be a real, significant appeal process that will keep it honest.

Mr. Chairman: What do you mean by "keep it honest"?

Mr. Heifetz: "Keep it honest" means provide leverage. I do not mean honest/dishonest. It is the leverage factor. If you are a lobby group and you are dealing with a majority government that has had a long tenure and a civil service that has a political order--the mandate has come down from the minister, "This is the way that we want this act to be regulated"--your lobby power, your ability to bargain with that civil service is minimized because it does not have that much room. Therefore, there should be, as I said, an appeal process of some kind for proper issues that are perhaps flouting government



policy to be aired for fair play and equity. I hope I am making sense.

Mr. Chairman: Are you thinking in terms of an appeal process once a regulation has been issued or do you mean prior to a final decision being made by the government of the day?

Mr. Heifetz: Most regulations--not most, but the regulations I am familiar with usually are enacted for a date in the future. Maybe the process should be all regulations should be enacted for a date in the future, with the appeal process taking place, allowing time for debate before the regs go into effect. I am thinking of the current regulations. They come into force on July 1 and they are issued in February. That is a four-month period. There are some lines in it that concern us. Hopefully, we will negotiate with the ministry and solve that. Let us say we do not. I would like to go to an appeal process.

Mr. Chairman: Who or what do you go to if the ministry does not agree?

Mr. Heifetz: I do not know. Can you help me?

Mr. McCague: The polls.

Mr. Heifetz: What is that?

Mr. McCague: You go to the polls.

Mr. Chairman: Mr. McCague, do you have a question?

Mr. McCague: I am interested in your comment about the civil servants being limited because of a message they might have received from the minister. We have had other people here who told us that all civil servants have a bottom drawer in which they keep everything they would like to do as long as they are civil servants, and if they ever get the opportunity they pull that out and try to persuade--in this case, if it is the Workers' Compensation Board--the aggrieved person that it is the law.

I thought that a lot of the regulations come from the civil servants to the minister for approval rather than some edict the minister might have given them as to what they will do in a regulation. Do you wish to comment on that?

Mr. Heifetz: Yes, I will comment freely, but I am not trying to put a finger on this particular minister.

Mr. McCague: No, I agree.

Mr. Heifetz: Because he may have his good reasons or his bad reasons. I have just gone through, as counsel for the travel association, a 360-degree turn in what we are facing, because up to now all regulations have come out of the civil service--out of the ministry, as you describe it--up to the minister, and he has been waiting. The ministers over the years have not been intervening ministers. They have been waiting to see what their civil service receives. Then they will act upon it if they choose to or not act upon it. That has been my experience now for 11 or 12 years.

This is the first time I have been involved when a minister publicly has made a statement, at the beginning of the process, of what he intends to do and put a time deadline on it. Therefore, there is a pressure factor regardless and therefore the lobby process is being changed entirely. It is

the very first time. If you had had me appearing before you before Christmas, I would have said the civil service does it all without any real problem. Now I am seeing that it can be a government policy.

I will finish this comment by telling you what I tell my own constituents. I speak quite often to the travel industry and I say whatever is happening is not just happening to travel. I read the same omen for the building industry, the real estate industry and the insurance industry. There is a parallel of what appears to be government policy, right or wrong, on consumer disclosure, consumer awareness, consumer obligations. So government policy now is coming out apparently clear onto the regulatory process, and industry is being told: "This is what we intend to do. Tell us your thoughts. We are going to do it." In the past, it has been coming the other way, from my viewpoint. Industry and civil service have been working at what to try to get through the regulatory process. I hope I have answered you.

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Mr. McCague: Yes, you have. It brings up an interesting question, though. John Q. Public probably would like it the way you do not.

Mr. Heifetz: Could be. I like it always, as a consumer, when somebody else is getting it in the neck. I loved it when they stripped the QCs. I just thought that was a hell of a--

Mr. McCague: You did not have yours yet.

Mr. Heifetz: When they went after the doctors, I wanted to applaud in the streets. When they went after the travel agents, I got a little nervous.

Interjection.

Mr. Heifetz: That is right. I am afraid that is the reality of the process.

Interjection.

Mr. Heifetz: I have nothing to lose.

Mr. McCague: Not even your "QC."

Mr. Heifetz: That is right.

The real issue, and I know you are dealing with it, is equity. The real issue we are all dealing with is what the best system is to solve, as fairly as possible, all purposes. I guess I must be becoming a democrat in saying it is as much open disclosure as possible.

Mr. Dekany: I would like to get back to the issue of an appeal process that you mentioned. Also, earlier in your remarks, you mentioned that some of the regulations under the Travel Industry Act may be challenged as having exceeded the authority in the act. I am very interested in it, and I think this committee in its scrutiny function would be interested in that as well. But it leads me to question you on whether you were envisaging the appeal process as an appeal on legal issues or on policy or on both?

Mr. Heifetz: I am not able to answer that intelligently. I have done no thinking, certainly on legal issues. On legal issues, for sure, the



question of the logic of the language, I know the legal draftsmen are supposed to be responsible for vetting that before it reaches the light of day, but in these regulations I am seeing, they did not vet it very ably, as far as I am concerned. So there is that obligation to argue on language and the meaning of language and how it affects.

On the second, the political issue, I have not thought out whether that is a matter for the electorate, for people, to argue politically. I have not thought that out. I would not give an opinion on the political side.

Mr. Dekany: On the legal issues, were you aware of the role of this committee as a scrutiny committee to scrutinize all regulations from the point of view of compliance with the enabling legislation and compliance with the charter?

Mr. Heifetz: I personally was not. Even though I am counsel and should be aware of that, I was not. We never had the problem in all these years. I will, after this meeting, acquaint myself with that process.

Mr. Dekany: Would you be able to provide written submissions to this committee on why you think the regulations have exceeded the enabling legislation?

Mr. Heifetz: No, because that is not our association's position right now. I said I had heard, because there are other associations out there in the travel field and there are rumours floating around that they have been considering challenging that act. Ontario at the moment chooses to follow the work-with-the-ministry approach rather than the abrasive one.

Mr. McCague: You mentioned that there should be an appeal process. I presume you are saying that an appeal process should be added to the present system but that if, as we are looking at, the outcome is a more open notice and comment system, for instance, of regulation-making powers, then you would not be suggesting an appeal procedure.

Mr. Heifetz: There is important intricacy involved in answering that question, because it is easy for me to give an uninformed answer. As I have just been told, this committee itself operates in some form as a review group. I think that was the suggestion, and since I am not fully aware of that, I guess I really do not know all the remedies.

Mr. McCague: Just before you proceed, it may be true that there is a format there, but could I say it is one that is seldom used by the committee, Mr. Chairman? The review mechanism?

Mr. Chairman: Oh, that would be pretty kindly, I think.

Mr. McCague: I guess our legal counsel does review and comment after the fact each year, as I understand it, on the regulations that are made by the government, and he has a checklist of things that he looks for. But as far as this committee being active over the past few years and really scrutinizing regulations that have already been made, I would suggest that it has been less than thorough. It has not even been done on occasion. In view of that, if we were to open the process up to more public scrutiny or industry scrutiny or whatever, I would think that then an appeal process should not be necessary.

Mr. Heifetz: I hear your question and I will probably answer it ambivalently, as a lot of lobbyists would. A lobbyist is what I am here today.

It depends what you want. If you are an industry association lobbying with the ministry for what you believe are good regulatory changes and if some consumer group might tear it apart, then you would not be too keen on too many appeal processes and too many open sessions. You would hope you could get along with the ministry and the civil servants and work out your destiny. There might even be rival lobby groups out in the industry that are completely scary to you, and therefore you will trust your relationship with the civil service and take your chances. That is pretty well the present posture of the Alliance of Canadian Travel Associations, Ontario.

But I can see a situation where that becomes completely intolerable, because it is close to (inaudible). In that case, yes, I would want maximum appeal procedures of some kind. I would want open processes because I would not want to be hostage to the attitude of a government or a civil service. I would really want to be able to open it up broadly, recognizing that the moment you open it up on one issue, you are opening it up on everything. Therefore, that is where the ambivalence in the answer comes, and I guess it is your job to come up with the final answers.

I know that the industry lobby group that feels intimidated is in a very dangerous position, and that is not good for the Ontario consumer--I know that--because the lobby group becomes weak, its membership loses belief and the whole industry falls down; it loses its credibility. You really want honest and very viable lobby groups, and therefore the ministries have to be very sensitive. The public is being protected 100 different ways by the Legislature and by the newspapers. I think industry needs a little bit more protection--not too much, but industry is losing again. Industry is in danger to some extent. Maybe industry went too far, but industry now is the one that you have to worry about. I am an industry lawyer and therefore I do not want to see anything to weaken the present position of industry in dealing with government.

That is not a direct answer, but it is the best I can do.

Mr. McCague: Thank you. You have done a lot in consumer protection in the last 15 years, which, from my point of view as an MPP, has made my job a lot easier. Previously you had to fight like hell to get anything. If somebody went bad, your constituents were just down the drain, and you have gone a long way. I know the calls I have had to make to the association have been dealt with politely and expeditiously, and there is a lot to be said for that.

Mr. Heifetz: Do you know what drives us nuts? Sure, the governments write us nice letters, but in the newspapers, in the media, the travel industry has never been given credit. All it gets is the bad headlines once a year, and it drives us nuts because we have done everything humanly possible that industry can do to raise the level of professionalism. It is very frustrating.

Mr. Lupusella: Because of the bad apples.

Mr. Heifetz: Yes, and the newspapers highlight them. We all blame the media, but it just catches the headlines and the travel industry looks lousy.

Mr. McCague: There is not much to talk about around Christmas and New Year's, you know?



Mr. Heifetz: Oh, I know. But so be it. It is not easy being an MPP, either, is it?

In case members would like to know why I am so strong in travel, I come from a family of people who have been travel agents for 66 years in Toronto. I was born a travel agent.

Mr. Chairman: There being no further questions, I thank you very much for your submission and your information. I think it helped all members of the committee, and we will certainly take it into account in the consideration of the report that we will ultimately submit to the Legislature.

Mr. Heifetz: Thank you very much. I have enjoyed it.

Mr. Chairman: Just to reiterate, we are back here at four o'clock. I will be pleased to see you all still eager at that hour.

The committee recessed at 11:51 a.m.

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STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

REGULATORY PROCESS

WEDNESDAY, MARCH 30, 1988

Afternoon Sitting





STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

CHAIRMAN: Fleet, David (High Park-Swansea L)

VICE-CHAIRMAN: Beer, Charles (York North L)

Cleary, John C. (Cornwall L)

Fawcett, Joan M. (Northumberland L)

McCague, George R. (Simcoe West PC)

Pollock, Jim (Hastings-Peterborough PC)

Pouliot, Gilles (Lake Nipigon NDP)

Ruprecht, Tony (Parkdale L)

Smith, David W. (Lambton L)

Sola, John (Mississauga East L)

Swart, Mel (Welland-Thorold NDP)

Substitutions:

Lupusella, Tony (Dovercourt L) for Mr. Beer

Stoner, Norah (Durham West L) for Mrs. Fawcett

Clerk: Manikel, Tannis

Staff:

Kaye, Philip J., Research Officer, Legislative Research Service

Dekany, Andrew C., Legal Counsel

Witnesses:

From the Canadian Bar Association--Ontario:

Blue, Ian A., Member, Executive Board; Legal Counsel, with Cassels, Brock and Blackwell

Intven, Hank G., Member, Executive Board; Legal Counsel, with McCarthy and McCarthy

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Wednesday, March 30, 1988

The committee resumed at 4:05 p.m. in committee room 2.

REGULATORY PROCESS

(continued)

Mr. Chairman: Members of the committee, I would like to introduce two witnesses who are here in their capacity as representatives of the Canadian Bar Association--Ontario. Ian Blue is sitting directly across from me. He is a solicitor with Cassels, Brock and Blackwell. Hank Intven is a solicitor with McCarthy and McCarthy.

Gentlemen, I believe you have already received the list of topics the committee has been canvassing last week and this. You are certainly not obliged to follow that list, but it gives you some general guideline. If you would like to make a presentation, I am sure, following that, there will be questions from members of the committee.

Mr. Blue: Thank you, Mr. Chairman. Also with us is Paul Bates. He is sitting to your left at the table behind us. Mr. Bates is chairman of the Canadian Bar Association--Ontario law reform committee.

I am happy to tell you that we have two parts to our presentation. The first part has been approved by the Canadian Bar Association--Ontario. In the second part, we have some other things to say about the issues you have listed in your notice. The reason they are not a common position of the Canadian Bar Association at this time is simply that we have not had time to address each of them and get clearance through the Canadian Bar Association--Ontario.

Hank Intven and I are administrative lawyers. By that, I mean we spend most of our time reading regulations, acting for clients by advising them with respect to regulations, conducting hearings before administrative tribunals and then litigating those decisions or those interpretations of regulations before the courts after the tribunal is through with them. I have been doing that for 18 years and Hank has been doing that for 12 years. Therefore, we believe we have something to offer you on your agenda items in regulatory reform.

I think the first thing we would like to talk about is item 1 of your agenda, the whole topic of notice and comment with respect to regulations. We think there should be notice and comment. Before I set out what the bar association's position is, let me make the observation that in 1988 the term "regulation" has two meanings to administrative lawyers and lawyers who use them. There is a technical meaning. The technical meaning is regulation as defined by the Regulations Act. We think that is far too narrow, and this committee should be concerned with broader things than regulations as defined by the act.

We believe regulations should be interpreted to include regulations as defined in the Regulations Act but also policy statements, guidelines, criteria, any sort of written material that a ministry or a government agency gives to users which indicates to those users how the discretion or the authority of that ministry or agency will be exercised.



As you are aware, guideline documents, policy documents, criteria and policy statements abound in the ministries of Ontario. They are not required to be published. They may only be obtained by asking, and lawyers who practise before government agencies or do business with the ministries are at their peril, because they may not be aware of the latest ones. We believe this committee would be missing a great deal of what should be looked at by it if it overlooked these other documents that we think should be included in the definition of regulations:

Having said that, let me deal with notice and comment. We believe the Legislature of Ontario ought now to have a province-wide policy for notice and comment with respect to regulations made by ministries and agencies of the government of Ontario. We believe this policy should be uniform and, therefore, it should be incorporated in a new statute. It could well be included in the Regulations Act by way of amendment.

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This policy would require each ministry and agency, before it makes a substantive regulation, to give notice to the public in the Ontario Gazette, in the Ontario Reports and in whatever other publication the ministry thought necessary to ensure affected persons got notice of any regulation. That notice should contain the authority under which the regulation is made, that is, the name of the act and the section number. It should contain a description of the intent of the regulation and the policies that the regulation is aimed at producing and should provide how anyone interested may obtain copies.

Then there should be a right of the public or the public's representatives to comment on the proposed regulations, either in writing or, if the ministry or agency thinks it is appropriate, orally. We would not, however, require an oral hearing in every case. We would require only that the ministry and agency provide copies of draft regulations to the public and give an opportunity to comment.

The amendment should go on to require that, after the ministry or agency has received comment from the public, it write a report. In the report, it should summarize the public consultation. It should summarize the principal points made by the public about the regulations and it should describe how that ministry or agency has dealt with those comments. That report should be copied to this committee, but also made public or published in the Ontario Gazette. That way, the public will be sure that its comments have been listened to and dealt with by ministries and agencies.

Let me make one other point. I said this should apply to substantive regulations. There must be exceptions. The exceptions would apply, for example, to procedural rules made by governments and agencies: the Ontario Energy Board, the Environmental Assessment Board and the Ontario Highway Transport Board. The reason for that exception is that those boards need to fashion regulations to deal with specific hearings. They do hear parties in advance and get parties' input. You would not want to tie the hands of those agencies this way. There should also be an exception for emergency regulations.

If someone claims emergency or the need to act with haste, then the government agency should get the approval of the Lieutenant Governor in Council, and a report of that approval and the reasons for haste should also be published in the Ontario Gazette so that the public can understand how that discretion is being exercised and not abused.

Is this policy radical and new for Ontario? I submit not. In practice, many ministries and agencies of the government of Ontario follow the procedure I have described anyway. The Ministry of the Environment is a good example. Regulation 618/85 made under the Environmental Protection Act, the spills bill, was subject to the most exhaustive public consultation and was improved because of it. Policies with respect to regulation 308, the air pollution regulation, are being treated that way. The Ministry of Municipal Affairs has submitted drafts of regulations and plans. Some ministries, however, have not.

It is the bar association's view that the statute that I am describing would really put into law what is, in effect, in many ministries already an established policy.

We refer back to 1971 when the Legislature passed the Statutory Powers Procedure Act. There the Statutory Powers Procedure Act imposed regulations and procedures on tribunals. At that time, many tribunals followed those same procedures, although some did not. By enacting a statute, we had uniform law across the province. I submit that as an appropriate precedent.

Federally, the federal government does not have a statute as such. It does, however, have a committee, which reviews regulations before they are enacted. The federal government also establishes and publishes a regulatory agenda. The regulatory agenda is department and agency specific at the federal level. It leaves it up to the members of the public to ask for the material. The material is usually provided and the public is given an opportunity to comment. There is, however, no formal process like the one I am suggesting.

The process I am suggesting is similar to but not identical with that set forward in section 553 of the United States Administrative Procedure Act. The rule-making process in that statute has been in effect for, I believe, approximately 35 years. It has worked well. It is felt that it improves regulations. I was in Washington the week before last, talking to government officials of many US agencies. I asked about this rule-making procedure, and all of them were consistently praiseworthy of the process. They believe it results in better regulations.

Mr. Chairman, members of the committee, if you want to ask questions about the federal procedure in more detail, Mr. Intven is a former federal lawyer and is intimately familiar with it. I believe that experience will be valuable to you.

This completes the formal presentation of the bar association of Ontario. Mr. Intven wants to add two or three comments, speaking for himself. They may well be incorporated in the bar association's brief. In any case, when he is finished, both Mr. Intven and I would be prepared to answer any questions you may have on what I have described and on any other item on your agenda.

Mr. Intven: I want to comment on a few points, those that relate to the items in your agenda that start at item 10. As Mr. Blue has mentioned, I do not think there is substantial disagreement, except possibly on one point, between Mr. Blue and I, as members of the Ontario administrative law section executive, on any of these points. It is just that we have not had a chance to go through the regulatory approval procedure of the Canadian Bar Association yet. We will be talking to them about this.



First comment: On the question of the mandate of the committee, in a general way it is our view that the mandate of the committee should be enhanced. It should be one, however, that deals primarily with the form and scope of the regulations put before you and not with the merits of them, in our view. We think it is more appropriate that this be left to the individual ministries. There is a risk sometimes, with excessive oversight, in having too much government of government, which only slows down the process and perhaps does not act to ensure that the ministries responsible do their jobs well in the first place and really keep an eye on what they are doing.

In terms of your question 10, I consider it would be appropriate for the committee to look at the question of conformity with the charter. Whether a regulation complies with the charter undoubtedly is a question of law in many cases. At the same time, if we are to breathe life and more life into what has become the fundamental law of the land, I think there should be more notice taken of it at all levels of government. Your review on this issue will only ensure that the ministries involved will keep a close eye on charter considerations in their drafting.

The unexpected or unusual use of delegated powers is another one I think is appropriate for you to look into, and I do not think it need take you into the merits of the individual regulations. On question 12, as I said, the answer has to be no, I do not think there is a need to go into the merits.

On question 13, I think the answer is yes in both cases, that the scope of the committee's review should look at the question of the regulation-enacting clauses of bills. The reason for this is it has become too much of a trend, particularly at the federal level, to try to move towards a type of executive government in which it is easier to pass regulations and avoid the need to put them to the House for detailed scrutiny. There is no question that it adds to greater flexibility on the part of the executive branch of the government, but I think ultimately it runs against the fundamental principles of the rule of law, and that is something the Legislature, through this committee, should keep an eye on.

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With respect to policy directives, as Ian mentioned, we definitely feel that this is a form of regulation, it is a form of the exercise of a statutory power and it is definitely something that should be reviewed by the committee, certainly with respect to the form and scope of such directions.

The next general area under amendments to the Regulations Act are your agenda items 15 and on. I guess Ian has basically said it, and I would just like to support his view. I think the definition of what is a regulation should be broadened. I have had the opportunity to look at Professor Janisch's comments to you on this question and, in general, I am in agreement with his approach. I think it would be a good idea to ensure that things that are done in the exercise of statutory powers without a formal regulation do not escape scrutiny for that reason alone.

The next item goes under form of regulation, agenda items 22 and on. I think it is hard to argue that the style of some of the regulations cannot be improved, even for lawyers, and yes, some might argue they would like to see more complexity built into it.

I think the answer is clearly no. Things have gone too far with some sorts of regulations. Some of the regulations under the spills bill are one good example, and there are others where a little more thought could have resulted in a more easily accessible regulation.

I guess the answers to the other questions are all in the same direction, as far as I can see. I think the format can be improved, but I think there should be explanatory notes. I do not think it is necessary to get into a formal type of impact analysis through your committee, but perhaps you should require the ministries to look into that and ensure that they have at least given some good thought to what the impact is going to be.

I think the statutory authority for a regulation must be identified precisely. There has been a fair amount of fuzzy thinking on the authority at all levels of government, I think, and sometimes there are lawyers who figure they will try to wing it in the end because their political masters feel that it is an appropriate action to take.

On item 26, the headings of regulations and the comments should be more descriptive and there should be some form of indexing, too, which makes them generally more accessible. I am not making any suggestions because I am saying that lawyers cannot read the regulations, but in order to do it efficiently, to try to save the public money, ultimately, I think it would be much better if a little more thought was given to organization and access to regulations rather than just churning them out.

Thank you. Those were all my comments.

Mr. Chairman: Gentlemen, do either of you actually read the Ontario Gazette?

Mr. Blue: Yes.

Mr. Chairman: Do you read it regularly?

Mr. Blue: It is in my current awareness pile, let me put it that way. It is something that I thumb through on the way home in the subway from time to time.

Mr. Intven: I will tell you what we do in our department. Hudson Janisch was asking this too. We have a library which provides an indexing function of some sort with respect to regulations, among other things, and weekly circulars of new laws and new materials there include the table of contents of the Gazette. At that stage, lawyers who are interested in a particular item will go and look for it or ask for a copy to be sent up.

One comment there is, one, everyone does not have a library and is able to do that; second, you cannot always tell from the table of contents whether something is really of interest. I have spent time leafing through a particular issue and it really was not that relevant to what I was doing there.

Mr. Chairman: Would it be fair to say that the people who even periodically leaf through the Ontario Gazette would be perhaps one per cent of all lawyers and an occasional lobbyist?

Mr. Bleu: I would be surprised if it was that high.

Mr. Chairman: I was trying to be generous to the professional people.



Mr. Blue: There are services being sold to libraries now, a federal order-in-council service and the Ontario service, which tries to put forward the information in the Ontario Gazette about the orders and regulations in an easier-to-understand, more accessible form. In my current awareness file from my library, I get those indexes as well.

It is a problem. The problem is that the plethora of regulations and orders in the work that the government does is not very interesting reading except for the ministries and agencies and correlatively the people affected. You are right. Very few people read the Ontario Gazette. Probably more know about the services and can find regulations they need to know. Your essential point is correct.

Mr. Chairman: There has been a suggestion made to the committee to adopt an American model whereby interested parties would register themselves with one or more ministries and upon the contemplation of a regulation notice would be given to every person on the registry. Is that a viable model to develop?

Mr. Blue: Based on my knowledge of the Ontario government it certainly is. The reason is that most ministries have those mailing lists already. Most people who are interested in the work of a ministry are well known to the ministry and anyone new who comes along gets known very quickly. Ministries by and large do their best to inform people who, to their knowledge, are interested in the issues they have jurisdiction over.

Mr. Intven: If I could just add something to that, I think it is a good idea to ensure that this is done more often and more routinely than it is. It is done quite often at the federal level at various agencies and departments. They keep mailing lists. Sometimes they charge for the privilege of being on a mailing list. In other cases they do not. I think it is a good idea. Having been with a regulatory agency, I think it is a good idea because it forces you to think a little more long-term than is otherwise the case.

Regulatory agencies of all kinds, both within ministries and independent agencies, tend by nature to be reactive. I think they should be thinking more strategically and thinking about what they should be doing in the future. I think it is a good idea. I think that if notice were provided, it is not a bad idea to occasionally summarize some of the notice provisions that are provided if it is not done, for instance, in the federal regulatory plan. When this was first imposed on the agency I work with, it was resisted but ultimately people got used to it and got used to thinking, "We had better sit down and really think about what we are going to be doing during the next year," and try to come up a reasonable description of what that is going to be so it can be included.

Since leaving government and not having the opportunity to be as familiar on a day-to-day basis with what is going on, I find it very useful to leaf through this when it comes out and see what the major initiatives of the various departments are.

Mr. Chairman: Since you have had the opportunity to be on both sides of the fence, as it were, with respect to the federal practice, is there any particular weakness in the federal practice of prepublishing once a year?

Mr. Intven: I think some of the agencies like the National Energy Board publish quarterly. I would certainly think there is a risk that people wait until the deadline for the annual registry, quarterly registry or

whatever it is. I think it is important that a full mailing list or other point-of-notice media efforts be made to notify people as soon as an initiative is being considered before it goes too far down the line. That is one potential risk.

I guess another one is that I am not personally all that convinced that it is necessary to set up a bureaucracy of the type that was set up at the federal level to review the substance of the regulations that are being made by various other agencies. I really think this can fall into the category of too much government of government. It definitely slows things down. I think perhaps it removes accountability to some extent. Ultimately, the minister is the one who has to be willing to say, "Look, I really thought this through and I think we should go ahead with this regulation," and not wait for the vetting process which will go on.

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Mr. Chairman: To whom is the minister responsible for regulations?

Mr. Intven: Ultimately to the Legislature, obviously.

Mr. Chairman: Do you think that actually happens in practice?

Mr. Intven: I think there is a great trend towards executive government, as I said, and I think that unless committees such as yours are vigilant, it is going to happen less and less.

The argument always is that the world is changing more quickly than it was so the rule of law may not be quite as important as it once was. I, for one, do not believe that. I think that it is a very risky course of action for the executive branch of government to embark on, but they are doing it all over. There is no question about it.

Mr. Blue: On that point though, the ultimate responsibility must lie with the Legislature because it is the Legislature which gives the government those powers. You have probably all heard the term the "C. D. Howe bill," that used to be in Ottawa; which says, "There shall be a department of X"--we will say agriculture--and then the act says, "The minister may make regulations with respect to agriculture. This act may be cited as..." etc.

You see massive grants of authority from the Legislature to the government. Once you grant that authority, it is very difficult to wring your hands and say that they are doing it and not coming back to us, because that is the authority the Legislature has given. It may be a subject that the House leaders should discuss. Involving the content and policy of bills being debated, some attention should be given--although it is not a very colourful subject--to the form of these bills when they are in the Legislature.

Mr. Chairman: I do not have a difficulty with that suggestion and, in fact, I think you put rather well a problem that exists in terms of accountability. But I have a hard time squaring that with the comment that I believe was made by Mr. Intven with respect to the review of the merits of regulations. How are you going to have accountability if nobody reviews the merits of regulations which, frankly, are currently in place, other than cabinet, in the process of making them?

Mr. Blue: Let me try it and then let Hank add to it. Again, the legal theory on which we operate in Ontario is supremacy of the Legislature.



The Legislature gives the minister that authority. If the regulation is legal, that means, if the act authorizes it, then constitutionally and politically, the minister has the power to make that policy.

If members of the Legislature do not like that policy, the place to talk about it is in the Legislature and ask him to justify politically why he exercised in that way the legal discretion he does have.

Why should this committee not review the policy? I guess there is a legal argument for that and the legal argument is that you have already given him the power to do that, so why do it? The political answer is that someone has to control the government. Whether a committee like this should do it or whether it should be done on the floor of the Legislature, is something that must be decided.

Mr. Chairman: They have given the power to committees in Ottawa. There are only one or two that seem, from media reports, to have actually exercised the power, notably the finance committee with Mr. Blenkarn. They seem to be quite prepared on that committee to scrutinize, with great care and deliberation, the proposed policies of the government, let alone the laws and the regulations.

I guess I still have not heard how you think this accountability will take place if you do not have a review by a committee, given that the Legislature literally has instructed this committee at this point not to review this.

Mr. Blue: I am going to make one more point, then Hank wants to comment. What is wrong with the committee's considering the estimates of the department? If you are looking at regulations, you are looking at one small sector of government activity, one small aspect of its programs. That is a pretty difficult handle to get on the government. But if you want to talk about how the minister is exercising his power, what programs he is doing and whether those are achieving public objectives, the place to do that is in the estimates committee.

Mr. Intven: I agree with what Ian said generally. I guess I have a few comments. First, I really think the proper place to look at the substance of law is when the legislation is first being enacted, and that is where I think there should be a really careful review of it. One of the things that should be reviewed at that time--and you have included a reference to that in your table of contents--is the regulation-making power, the enabling clause.

I think at that time, either the Legislature or you, as a committee, should assure yourselves that the regulation-making clause is not too broad, that you are not using a C. D. Howe bill kind of approach. I think that is one thing. I do think it is the committee.

The second thing is, there are enough important things that this committee can do, doing it on a regular basis, that you are going to be very busy if you do it. I am not saying it is a bad approach to have a legislative committee look at regulations. To the extent that that does happen, and it can happen by a reference or whatever other mechanism, I would suggest that it is probably the committee responsible for looking at the substantive area rather than the regulations committee.

I guess the reason for that is just a practical one. I doubt that you are going to be able to develop the expertise or get the professional

assistance that you will need from your staff to really look at the merits of all the different rules. I think that if you give everyone out there who wants to take a kick at every regulation and its substance a chance to do it, you are going to be sitting long, long days.

Mr. Blue: I will just add an observation. At one point in my career I was a legal adviser to the federal cabinet's legislation and House planning committee. That committee met weekly. It considered not regulations but statutes. The resources that committee had were one lawyer, me, and a couple of Privy Council office federal officials who were on the fast track upwards. Simply the job of examining the policy memos and the drafting memos for bills was such a monumental task that the committee could barely get through one bill a month. That was a fairly large committee which at that time had some resources. Just think of the work this committee would have if it purported to do the same job, with all the regulations made under the several existing statutes in Ontario and the amendments. I am just confirming Hank's point.

Mr. Chairman: Is it fair to summarize your position as being that you would be perhaps more amenable to some kind of a merit review by other committees of the Legislature rather than this one?

Mr. Blue: The answer is yes, because a committee that is charged with the estimates of a ministry has the officials and can look at the totality of the programs of that ministry, of which regulations is only a small part. The purpose of the legislative committees is to scrutinize and to ensure that the government's objectives are in accordance with the way the Legislature has specified them by statute and that they are doing a good job. Regulation is only a small part of that.

Mr. Intven: I agree with that. I guess the only thing I would add is that one risk in having a routine reference of every regulation is that you are just going to slow down the process, and it is important in some cases to move relatively expeditiously. If you did have such a review, perhaps it should be on a specific regulation basis rather than as a routine matter.

Mr. Chairman: There has been some suggestion by some of the witnesses that, at least in the federal system, there was a significant benefit with reform, if for no other reason than that the civil service was forced to examine the process by which it created regulations--recognizing that the civil service, in fact, creates them as opposed to the ministers most of the time--and that there was a significant decline in the total number of regulations that came forward as a result of the implementation of the reform system. I am wondering what your views are with respect to that issue.

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Mr. Intven: You are talking about review on the merits?

Mr. Chairman: The whole system they have in reform. You made some somewhat negative comments about the apparatus they created, but we have had some evidence which suggests that the sheer number of regulations coming forward was reduced. As well, the suggestion was that this was because, for the first time almost, the civil service as a whole was forced to really think about what it was doing, had to justify what it was doing, and it cut out unnecessary regulation, at least implicitly.

Mr. Intven: I just have a couple of comments. First, I think the reason there is less regulation in Ottawa is not just the establishment of the



office within Treasury Board which would use the regulations, but because it is the government's policy to have less regulation. I think you can do that and impress it upon the ministers of government and the ministries of government without necessarily setting up that kind of structure. It is just the nature of this particular government.

The second thing I would say is that, from my experience, it is not always the civil servants who look for reasons to enact new regulations. It is very often the legislatures, the legislators or the government who will respond to a perceived political need by saying there ought to be a law about something. Very often, the public servants are merely the ones who end up drafting the things.

The third comment is that if there is a review, again, I am not sure the establishment of routine committee review is necessarily going to reduce the number of regulations. My experience in appearing before committees has been that there are very often members who want you to go farther than a particular ministry or agency is prepared to go because they perceive the public interest differently from the agency.

Mr. Blue: I think the other point about the federal government regulations is that, even prior to the present government, there was quite a strict regime in place about enacting regulations. Each set of regulations must under federal government policy be accompanied by a cabinet memo; it is considered by the appropriate cabinet committee; the cabinet committees in Ottawa are served by staff in the Privy Council office. Any regulations then had to be reviewed by the Privy Council office for basically the things you have listed in your mandate, and they had to be co-ordinated. One of the criteria was: Are there too many regulations and what is it all there for?

The present government has put in new structures and the people who were doing the job before have moved into new departments, but the exercise is essentially the same. The lack of regulations, as Mr. Intven says, is because the government in Ottawa is encouraging a lot fewer regulations.

Mr. Chairman: Are some of the larger regulations the Ontario government has dealt with ones which could just as easily have been separate pieces of legislation? The environmental area might be one example.

Mr. Blue: Speaking in the environmental area is difficult. Let us take regulation 309 under the Environmental Protection Act. It deals with the registration of waste movements, definitions of hazardous wastes. The regulation has been amended three times in about the last five years. The amendments have been substantive and they have been technical. In my view, as the Ministry of the Environment gets more information, they will be amended further.

The Minister of the Environment (Mr. Bradley) has announced a review of regulation 308, the air pollution regulation, and the review is on matters which are highly technical. The impracticality of debating those at length through second reading and in committee of the Legislature is apparent.

Take for example the compensation regulations in the spills bill, in part IX of the Environmental Protection Act. In my view, I just do not understand why they were not part of the statute. They incorporate hard and fast legal rules and they are unlikely to change. Numbers in them may change, but the rules themselves are unlikely to.

To answer your question, some regulations yes, other regulations no. The more technical the regulation--and they become more technical when you are dealing with scientific matters such as the environment--probably the more appropriate it is to leave it with the ministry, but then it is probably more appropriate to have statutes that delineate more precisely what the regulation-making power is.

Mr. Chairman: Would it be appropriate that this committee have a duty to scrutinize legislation and regulations with a view to recommending to ministries those areas that have deficiencies in the legislation on the face of the legislation, along the line you are talking about and, correspondingly, when looking at regulations, to say certain parts of certain regulations ought to be in legislation and not in regulation?

Mr. Blue: In my opinion, that would be a highly useful task for this committee to undertake. It would be a monumental task, but none the less a useful one.

Mr. Intven: I agree, Mr. Chairman. I think that is essentially the point you raise in item 13A on your agenda. I think there is a risk in slowing down the process too much, but if you make it known several times as a committee that you are really not satisfied with the way the government has gone about trying to legislate by regulation, then I think it will be taken into account and it is something the drafters will keep in mind next time.

Mr. Chairman: I have a different question altogether and it is not intended to cause you to breach any obligations you have to any clients about confidentiality, but it might be of some value for the committee to understand the kinds of clients you represent, given that their interests in regulations may not be the same as that of other types of individuals out there.

Mr. Blue: I represent a variety of private corporations, but also government agencies. I have the privilege of representing, for example, the Ontario Waste Management Corp. I had the privilege for years of representing Ontario Hydro, but I represent individuals. I represent private companies. My clients are simply those who, in some form or another, have business with the government.

Mr. Intven: I have been fortunate in that mine really cross the spectrum. I represent a major federal government department, or do work for them, including the drafting of legislative and regulatory materials. I act for a large utility in the electrical field and we also represent one in the gas pipeline business. At the same time, I acted for quite a number of interveners in other proceedings who have views that are very different and often are smaller groups, trade associations or shippers in the transportation area rather than railroads or trucking companies, for instance. I have been fortunate in that I have not been captured entirely by one group or the other.

Mr. Chairman: Your firm is probably glad of that, too. How do consumers have any input in the regulatory process, whether it is the travel industry or buying a house or any ordinary retail type of interest? How do the nonindustry stakeholders in regulation have a say?

Mr. Blue: Today?

Mr. Chairman: I think we know the answer to that largely, but today, and also how ought they to?



Mr. Blue: Remember, when I was proposing the notice I said the Ontario Gazette, the Ontario Reports, so you reach lawyers, and any other means--this is what the statute would say--that the ministry or agency thinks necessary to reach the public. When you are dealing with consumer issues, I can see the ministry or agency publishing notices in every major newspaper in Ontario.

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All the consumer needs to do is a lot because it takes a lot to get an ordinary person to react to the government. One is to write to get the material and the second is to comment on it after he has written. That is asking a lot. Speaking for myself personally, I write away for a lot of stuff. I read it on my chesterfield after dinner and say, "Should I dictate something or not?" In most cases, even though I am interested, I do not.

It may be because I know what a brief that will be read and respected takes. On the other hand, I have been involved when acting for government agencies federally and provincially and have seen the letters ordinary citizens write. They get read by the ministry, by senior officials. Usually they are long and usually they are summarized, but the views are taken into account. Under the process we are suggesting, the public would have a chance to write, but it does require them to do the difficult job. It is difficult for ordinary citizens to take the time to write for the material, read it and then write another letter commenting on it. You are going to get the person interested in those issues.

Mr. Intven: I agree with what Mr. Blue said. I just add that in addition to giving them notice, you have to give them comprehensible notice, if I can put it that way. Some effort should be put into developing a plain-language summary of what the purpose of the regulatory initiative is. Then, beyond that, it would not be a bad idea to designate an official with the ministry or agency involved who will be very little more than an information officer able to explain some of the background to those in the public who want to know a little bit more about what is going on. You cannot just publish a notice, as some departments, ministries and agencies do, which is all legal gibberish and references to various sections in various acts, and expect to get any meaningful input.

Mr. Chairman: The suggestion being that the prepublication document, if there were one, ought to be simply a plain-language document most of the time?

Mr. Blue: Yes, definitely.

Mr. Chairman: Presumably, the federal document, which I think you have in front of you, and which is two inches thick, would be cut to a quarter of that?

Mr. Intven: Actually, it is not bad. I opened it at this page. What it is is a series of very short notices. The first one I opened it to was the airfield zoning regulations for Trenton, Ontario. It simply says these regulations limit the height of buildings, structures and other objects and prohibit waste disposal sites and other land uses which might attract birds to the vicinity of the airport. It has the anticipated impact, the statutory authority, the expected date of publication and a contact person with her phone number.

Mr. Chairman: So you regard that kind of description as sufficient?

Mr. Intven: I think you need to do both. You need to do something for the lawyers because they want to know what section, what the authority for it is--the lawyers on the committee know this--and therefore, through study, be able to determine what they are really up to in terms of the legal aspects of the initiatives. At the same time, in answer to your question, Mr. Chairman, you have to provide the public with something like this that any literate person could read.

Mr. Chairman: There is essentially, in your view as I understand it, no advantage at all to putting that in the Ontario Gazette?

Mr. Intven: You have said it yourself. The average person does not read the Ontario Gazette and the average lawyer probably does not read that much of it, so that is something for newspapers or specialized publications which will reach a particular audience.

Mr. Chairman: Is there any value at all to having an Ontario Gazette?

Mr. Intven: You need some place to publish the text of the regulations. The text of the regulations will be the law, and I think much can be buried in the fine points. Those who are really interested in it--and sometimes they can be consumers' organizations or other public interest groups that can make very sophisticated input on that and certainly impact on it--should have a right to know exactly what they are going to face in whatever regulation.

Mr. Chairman: I am wondering whether something that is theoretically a mass circulation document, which is the Gazette, is necessary and worth while. Maybe all we need to do is produce a summary with occasionally photocopies of the document for the 10 lawyers or advocates who might request it.

Mr. Blue: You need an Ontario Gazette. The US has the Federal Register. It is just a matter of record of the formal text and legal instruments surrounding regulations. Until you can persuade the draftsmen to write in plain English, they are going to draft regulations the way they have done it since the time of Edward I, in a way that they understand.

Mr. Chairman: I suspect they are still on retainer.

Mr. Blue: That is right.

Mr. Intven: I hope you understand, too, Mr. Chairman, that just because a lot of lawyers do not read the Gazette as bedtime reading when it first comes out, everyone has it in his library. It is available to consult when they have a particular problem that they have to deal with.

Mr. Chairman: I appreciate that. I am wanting to get on the record, though, what value there may be because I am sure some people would question if it has any value at all.

Mr. Blue: It is valuable to people who need to know, and those are lawyers and government officials. We both said we either thumb through it or we get a summary provided by our libraries. We have a legal research department that reads it and directs peoples' attention to the parts they



might be interested in. We need to know that. If you take away the Gazette, you take away something like the statute book, the official text of the regulations and the date of publication. That is the law. If you take that to court in a court case, someone can say, "I do not think that is a text of the regulation." The judge says, "That is the Gazette. That is law." There has to be some authoritative statement attached. That is the purpose of the Gazette. Even back in the time of Edward I, no one thought everyone read it.

Mr. Dekany: Mr. Blue, I have some questions first of all about the proposal, just to make sure I understand the Canadian Bar Association's proposal, giving advance notice to the public. We have been talking about the federal system and the federal regulatory agenda, which I understand is published once a year or now semi-annually. It contains a summary of initiatives proposed for the following year. The federal government also publishes in draft regulations at a period of, I believe, 45 days before they come into effect.

Is it the bar association's proposal that a regulatory agenda-type document be published to give advance notice either semi-annually or at the beginning of each year?

Mr. Blue: No.

Mr. Dekany: Is it the proposal to publish something about each regulation as it is about to come out? If it is the latter, what is the position about publishing the draft text of the regulation?

Mr. Blue: It is the latter. In the notice, described in plain words, what the purpose and what the policy is, and let people obtain a text, if people want the text, by simply asking for it. The text of the proposed regulations would be made available upon request or comment. But for heaven sakes, do not send me the draft text of regulations in advance. I have enough trouble with the existing ones. Send me notice so I can tell you whether I am interested in the ones that you are proposing to pass.

Mr. Dekany: That is interesting because we heard earlier today that certain groups would be very much interested in the text of the draft regulation which would affect their industry. I presume that if you saw a regulation that was going to affect your clients and was of interest to you, then you would request a draft text so that you could make comments on the draft?

Mr. Blue: Yes.

Mr. Chairman: I am wondering whether it would be greater benefit, frankly, given the way governments tend to operate, to simply issue both together?

Mr. Blue: The plain meaning and the text at the same time?

Mr. Dekany: As they do at the federal level.

Mr. Chairman: For those people who, frankly, will not understand the text and without the plain meaning, which may include both lawyers.

Mr. Blue: I do not think we would have trouble with that.

Mr. Intven: I agree with you, too, Mr. Chairman, as a practical matter, the two have to fit together, and you are not going to be able to do the former all that much before the latter; that is, the notice.

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Mr. Chairman: Frankly, having been a practitioner myself, albeit not in administrative law, having to rely on the mails once the clock had started to tick when they sent out the first version, by the time you got it, read it, decided you needed it, got it back out of your office, which ordinarily might take a certain period of time but on occasion will take much longer for reasons of a busy practice or whatever, you may have lost a lot of time in order to respond to the government. That is the concern I would have.

Mr. Dekany: At the federal level, we have the Gazette divided into three parts, I believe. Would you see a value in having the Ontario Gazette divided into at least two parts? One of them could deal exclusively with regulations and draft regulations or notices about regulations.

Mr. Blue: Yes, I would like the third part too, with the statutes as they are enacted in paperback. The answer to your question is yes.

Mr. Intven: I agree.

Mr. Dekany: What is your position about publishing a document similar to the federal regulatory agenda in advance at the beginning of the year or semi-annually? Are you in favour of that as well?

Mr. Blue: It is not part of our proposal, but certainly I am in favour of it. I am sure Hank is.

Mr. Intven: I guess in a general way, I am. Maybe there should be some effort to focus on what is really important. I do not think any of us want our tax dollars to go too much to hiring a lot of people who put there very detailed summaries of every initiative, whether important or not. If some judgement is exercised, I think it would be very useful to give notice.

Mr. Chairman: You have mentioned that in your law firms you have a system of summarizing regulations. One of our earlier witnesses, Professor Janisch, referred to the fact that there is a lot of duplication of effort among law firms doing basically the same thing. He recommended that to increase greater access, we have an indexing of the Ontario regulations as we do the Ontario statutes. What would your views be on that kind of task, keeping in mind that it seems it would be quite an enormous task to index Ontario regulations?

Mr. Blue: That is the observation I would make. If it could be done, great. I use the index to the statutes and I find it very helpful. As you know, many federal statutes do not have indexes.

Mr. Intven: I am with Professor Janisch on that one. I think it should be done. It is unacceptable to have a situation where even trained lawyers have to spend hours trying to find a simple regulation that applies to a particular case, not to mention members of the industry or the public who may follow the regulations closely.

Mr. Chairman: Should we be charging money for the ones that we send out? Should we be charging more for a Gazette index?



Mr. Blue: I could not tell you what we pay for the Gazette or whether we pay for it. I just do not know.

Mr. Intven: It is \$52, I think.

Mr. Chairman: It is a fairly marginal amount of money.

Mr. Blue: That is right.

Mr. Chairman: Given its functional utility, maybe that is not an unfair amount. If we were to increase the value of it in terms of its use, maybe we should be charging considerably more, which might cause some problems for Carswell Legal Publications or whoever else puts out competing documents in the public interest.

Mr. Blue: I will withhold comment on the grounds of conflict of interest.

Mr. Chairman: I did ask about your clients, remember.

Mr. Dekany: You did refer to a private regulations service providing some information. I take it you were referring to Carswell?

Mr. Blue: Yes, I believe that is right, Ontario Regulations Service.

Mr. Dekany: Which does not really provide an index.

Mr. Blue: No, it just summarizes.

Mr. Dekany: It does not even summarize the text of the regulation. All it does are updates, so you can tell whether there has been an amending regulation at any point in time. That comes out on a weekly basis, I believe.

Mr. Intven: With all due respect to my friend, if that is his client, I do not think that is good enough. I do not know how you would do it. It is a good question. I think it is something the private sector could take on and perhaps should, but it might require some support, either moral or financial, from the government to get the thing started, but it should be done.

Mr. Chairman: Even if we just did it on a prospective basis, presumably it is still of significant benefit.

Mr. Intven: It would help.

Mr. Blue: It is of significant benefit. Bear in mind, though, it is incredibly expensive. A competent indexer probably is a librarian or an English scholar or a lawyer, and indexing itself is a highly specialized skill. Indexing statutes is even more specialized, and indexing regulations I cannot imagine. I have hired people to do this for particular statutes, regulations and cases. It takes a long time and it is expensive.

Mr. Dekany: One of the topics which we have not discussed is the powers of this committee and of the Legislature to disallow regulations. It is the theory of this committee that one of the functions it serves is to avoid the delay of having to go to a court and the expense of a court proceeding if there is a legal problem with the regulation. Considering that you and your clients may wish to approach the committee if there is a problem with a regulation, rather than go to court, what are your views on the disallowance powers?

Mr. Blue: This is one where we really are speaking for ourselves. My view is the Legislature can give the committee that authority but I see legal problems with it. I really do. Let us say that this committee sat and made a judgement that a regulation was legally bad. Would that not be the type of power that a court had under section 96 of the BNA Act? Might you not find yourself in a big constitutional struggle over whether the Legislature had the power to give this committee that sort of authority?

I have always thought courts make legal judgements about whether regulations are within or beyond the powers of a statute. Why would the committee want to take on that job? You say it is less expensive, but is it? In a court document, I can draft a factum fairly cheaply, stating that a regulation is ultra vires or beyond the powers. I can file it over in Divisional Court and I can get it heard within six months.

If it comes before this committee, I do not how to get on your agenda but it is going to be the subject of a massive lobbying exercise and my client will have to pay for it. When I make the argument, I do not know who I am making it before. I know in the Divisional Court I make it before people who will make judgements on the basis of law and who are highly trained in it. I do not know what judgements the committee members will bring to bear. If they are legal, my client is still going to need competent counsel and you are going to need counsel. Are you really making the process more smooth and less expensive? I do not think you are and I think you run the risk of getting into a constitutional law battle the first time that one of the parties does not like your decision on the grounds that you had no competence to do that.

Mr. Dekany: The recommendation is not that the committee itself disallow, but that there is a mechanism so that it can bring forward its suggestions to the House and that the House would act on that. So the disallowance procedure is--

Mr. Blue: Is in the House.

Mr. Dekany: It is a disallowance by the House. The committee does have counsel to the committee at that time to scrutinize, but in view of your comments, do you think this committee should continue to exist and continue with its scrutiny role of regulations?

Mr. Blue: Yes, within the terms of reference that you now have because this committee brings to bear on regulations the light of public scrutiny and publicity. That is always healthy.

Mr. Intven: I think it is a very difficult question. The downside of a disallowance power is the uncertainty that it brings to the process. I suppose if you are going to have a disallowance recommendation power then there definitely would have to be strict time lines within which that should be exercised.

On the other hand, I have some sympathy for the concern that if you do not have any teeth, then what is the use of proceeding. I do not know. I think negative reports by you within your terms of reference can have some considerable value. Maybe there ought to be a simple requirement that the minister or the ministry respond to the Legislature perhaps as well as to you within a certain time after a negative report by you on a particular act. I guess I really cannot advise you too much. It may be appropriate to go the federal route and try it out for a while to see if it works in a reasonable manner and then discontinue it if it does not.



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Mr. Dekany: The scrutiny function of this committee is not really well known to the bar. That is my impression.

Mr. Intven: You are right.

Mr. Dekany: Do you think it would be useful for the committee to have a higher profile with the public and, in particular, with the practising bar so that if there were regulations which had a problem and fell within the committee's terms of reference, there would be an easier access to the committee?

Mr. Intven: I think it might. I think as a practical matter, though, with the exception of rather unusual people like Mr. Blue and me, most lawyers do not appear before committees or do other work unless they are paid to do it. We are here, of course, on behalf of the bar association, and I think the bar association could be counted on to make submissions to you and send representatives. In the case of most others, most private clients are not going to want to hire a lawyer to look at the kinds of things you are looking at unless there is a very specific concern that comes up. I doubt as a practical matter that that is going to happen, to be quite honest with you.

Mr. Dekany: Just one last question. It has been suggested by one witness that the committee, because of the expertise it would develop in reviewing regulations for the charter, should also be reviewing bills for the charter. Do you think that would be a worthwhile function?

Mr. Intven: Personally, I would think that is the function of the House. I do not have any strong views on that.

Mr. Blue: My view is that on bills, the charter issue should be like all other issues and should be reviewed by the committee to which the bill stands referred.

Mr. Chairman: I guess it is a question of technical expertise. The other committees as a rule do not have counsel.

Mr. Intven: It is a good point. If that is the case, it certainly does not hurt to have some scrutiny here.

Mr. Blue: If a bill has charter problems, you will hear from counsel. They will be there testifying before the committee.

Mr. Chairman: The object, though, is to flag it before it necessitates people retaining lawyers at, frankly, for most people, very expensive rates, even if it is a moneyed association or industry. Usually a charter question becomes very technical and very--

Mr. Blue: This is where members must be practical and realize that most ministries have highly competent legal staffs. You have problems in bills, you have policy problems and you have C. D. Howe regulation-making powers, but you are probably not going to find many charter problems in bills, because that will be combed out before the bill gets introduced into the House.

Mr. Chairman: That is assuming that the ministry counsel wants to have the same aggressive sense of scrutiny over his own minister that a committee might. Not everybody would.

Mr. Blue: They are pretty aggressive. Most ministers do not like the prospect of having the court say that a bill they sponsored violates the Charter of Rights and Freedoms.

Mr. Chairman: Fair enough. That is a good point. Are there any questions by any other members of the committee? That being the case, Mr. Blue and Mr. Intven, I would like to thank you very much for the time you have taken and the expertise you have been able to provide. I certainly found it very helpful. I want to thank you on behalf of myself and the other members of the committee for the effort you have made and, as well, to thank Mr. Bates for his moral support for you in his watching brief, I guess, for the association.

Mr. Blue: He is taking notes of what we said.

Mr. Intven: And reporting back.

Mr. Blue: Thank you very much, Mr. Chairman. We appreciate the opportunity to address the committee and hope that we have been of some assistance.

Mr. Chairman: At this point, for the members of the committee, we are meeting tomorrow at 10. The list of people who are scheduled to show up has not changed, at this point, anyway. We have not heard anything back about two meetings next week of this committee. At this point, we are looking at one meeting on Wednesday morning, with some possibility that something would be agreed to so that we would start sitting Wednesday afternoon of next week. More likely it is going to be delayed, I suspect, because the House leaders have not yet met.

I am not sure exactly what the composition of the committee is going to be next Wednesday. My suggestion is that even if people who have been serving on a substitutional basis are not technically expected to come back next Wednesday, you may want to arrange, on a personal basis, to see if you cannot continue in your function on the committee. Alternatively, or in addition, certainly speaking for myself, I would welcome participation by members, even if they are not technically members of the committee for voting purposes.

I think the first meeting is largely going to be a discussion anyway. It will be in camera. I suspect that would be widely shared. I appreciate the effort that the members here have put in quite consistently. I think, and I am speaking personally, you ought to be involved in the decision-making of the report. It is certainly my position that this is a very important part of the process.

I do not think I require a motion to give notice, but we will do our best. I will have the clerk try to make sure that anybody who served at any point during last week or this week will get notice of when we are considering the issues that go into the report. Is that agreeable?

Mr. Pollock: That is agreeable.

Mr. Chairman: Good. There is also a submission that has been made in writing by the Consumers' Association of Canada, dated today. I suppose that is in lieu of their physical appearance here. There is also a copy of the act in Quebec, both a French and English version, on regulations. I am sure you will want to pore through this tonight so that you are all boned up for tomorrow. Thank you very much.

The committee adjourned at 5:16 p.m.





STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

REGULATORY PROCESS

THURSDAY, MARCH 31, 1988





STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

CHAIRMAN: Fleet, David (High Park-Swansea L)

VICE-CHAIRMAN: Beer, Charles (York North L)

Cleary, John C. (Cornwall L)

Fawcett, Joan M. (Northumberland L)

McCague, George R. (Simcoe West PC)

Pollock, Jim (Hastings-Peterborough PC)

Pouliot, Gilles (Lake Nipigon NDP)

Ruprecht, Tony (Parkdale L)

Smith, David W. (Lambton L)

Sola, John (Mississauga East L)

Swart, Mel (Welland-Thorold NDP)

Substitutions:

Mahoney, Steven W. (Mississauga West L) for Mr. Beer

Marland, Margaret (Mississauga South PC) for Mr. McCague

Miller, Gordon I. (Norfolk L) for Mr. Smith

Stoner, Norah (Durham West L) for Mrs. Fawcett

Clerk: Manikel, Tannis

Staff:

Kaye, Philip J., Research Officer, Legislative Research Service

Dekany, Andrew C., Legal Counsel

Witnesses:

From the Cabinet Committee on Regulations:

Sorbara, Hon. Gregory S., Chairman; Minister of Labour (York Centre L)

Wilson, Suzanne R., Committee Secretary

From the Ministry of the Attorney General:

Tucker, Sidney, Deputy Senior Legislative Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Thursday, March 31, 1988

The committee met at 10:08 a.m. in committee room 2.

REGULATORY PROCESS  
(continued)

Mr. Chairman: I see a quorum. We have three witnesses, one of whom is the Honourable Greg Sorbara who is the Minister of Labour but who is coming before us today primarily in the context of his position as the chairman of the cabinet committee on regulations.

Sitting beside him is Sidney Tucker who is the deputy senior legislative counsel. I hope I have the title right. He is also a person very experienced in the issue of regulations, having been both the registrar and assistant registrar for well over a decade between the two offices.

In addition, we have Suzanne Wilson who is the secretary of the cabinet committee on regulations. I would entreat Mr. Sorbara to commence and all three of you to make whatever presentation you would like. Then we will have questions coming from the members of the committee and counsel for the committee in due course.

Hon. Mr. Sorbara: Thank you, Mr. Chairman. I would like to begin by expressing to you and to the committee the fact that it is a pleasure for me, and I think probably a pleasure for Mr. Tucker and Ms. Wilson, to be before the committee. I have a broad general sense of the interest that the committee is pursuing right now. I have some knowledge as well of what the legislative responsibilities of the committee are: that would be the case both for the committee's review of regulations passed and for private members' bills.

I have also had an opportunity to have a look at some of the topics that the standing committee is looking at in the area of regulation and I certainly am willing to answer, to the best extent possible, questions that you have on any of the areas mentioned in the document that was presented to me or, for that matter, on any other area where I can be helpful.

I should begin by telling you that I have served as chairman of the regulations committee of cabinet since our party assumed the responsibilities of government back on June 26, 1985. I find it a challenging, interesting, fascinating responsibility in the cabinet process. The committee has an opportunity and a responsibility to review and make recommendations in respect of regulations that comes before the cabinet. That provides both me as the chairman of that committee and the members of that committee with the unique opportunity to see and participate in the ongoing development of public policy and, more important, the implementation of public policy through the process of making regulations.

It is important to understand that the cabinet committee on regulations is just that, a cabinet committee that deals with regulations. You will understand, because you have been pursuing these matters, that most but not all, but almost all, regulations come into effect as the result of an order in council. Order in council means something that cabinet does.



I do not know the history--I wish I did know the history--of when the cabinet committee on regulations was initially struck but I assume there was a period in the government of Ontario when it did not bother to have a cabinet committee on regulations. The regulations the Lieutenant Governor in Council was going to make through an order in council would simply come to the cabinet and the members of the executive council would look at them, discuss them and then determine that they should be approved. Then an order in council would be drafted and signed by the chairman of cabinet and by the Lieutenant Governor and would become law. A regulation approved by order in council becomes law, as you know, when it is filed with the registrar of regulations.

Perhaps Mr. Tucker who knows all this history will be able to pinpoint a date--not that you were around at that time, Sidney. It may well be that he knows exactly when it was that cabinet decided to have a committee to deal with regulations. There is no particular magic or special legislative jurisdiction for the committee. I think I can speculate safely that one day cabinet said: "My God, we are spending all our time on regulations and we are not getting anything else done. Why don't we have a committee to look at them and then we can deal with them by way of a report of that committee and we will not take up so much of our precious cabinet time?"

I do not know when that was, but it was probably a pretty good idea. The cabinet committee on regulations deals with a lot of regulations now, sometimes at a meeting of the committee which, by the way, takes place generally on Mondays during this administration and lasts two or three hours. We may deal with some 20 or 30 regulations. We will look at those regulations, consider them from a number of points of view and then either make a recommendation that cabinet proceed with them or not.

A recommendation in some respects does not hold much water in the sense that if cabinet looks at the regulation and decides it wants to make that regulation, it will. Sometimes, in fact, when the issue is probably appropriate for cabinet to discuss at greater length, the regulation will go from the committee to cabinet without a recommendation so that cabinet can have a further discussion on it.

What do we do there? We do a number of things. To explain in better detail what we do, it is necessary to understand the regulation-making process in general. You all know that regulations are made because there is authority in a statute to make those regulations. If there is no authority in the statute, there is no regulation. How do they come about? They come about as a result of a determination within government that it is appropriate to make a regulation at a particular time dealing with a particular thing.

As a result of that initial determination, the ministry--let us pick an example--the Ministry of Health determines that it ought to make regulations dealing with A, B and C under the authority of Act D. That process will develop within the ministry and, ultimately, there will be a document that has been reviewed by legislative counsel and, after developmental work has gone on, the ministry will come before the cabinet committee on regulations.

We rely in that committee on the sound and authoritative advice of legislative counsel as to whether there is authority to make that regulation. What we do, because we are politicians, is look at the political side of it. Until it comes to us, it certainly has been looked at by a minister, but what we do is review the political implications, not check the wording to make sure that clause (a) is a logical precedent to clause (b). We have to understand what this means for public policy and for the government as the agency responsible for the ongoing development of public policy.

Sometimes our analysis will be exhaustive and thorough because the issue is an important political issue and sometimes we will simply rely on the advice of the minister that this is an appropriate thing to do at this time. This time around, the regulations committee of cabinet is chaired by me. It is co-chaired by my cabinet colleague Bill Wrye and its membership is made up of nonministers within the governing party, within our party.

I think there is historical precedent for that. At one time under the previous government, under the Conservatives, parliamentary assistants made up the regulations committee of cabinet. I am not sure whether there was a chairman who was a cabinet minister but I assume there was because, after all, this is a cabinet committee. There is no magic to it. A minister does not have any better political insight in many cases than a nonminister. What we have is an environment where we can look at political implications and determine whether we want to proceed.

1020

I will close with this because you will probably have questions. It should be understood that the cabinet committee on regulations is not a policy committee. In fact, where a regulation comes before our committee and it is the view of the committee that there are significant new policy implications for government as a result of the regulation, if the regulation were passed, very often the committee will say: "You are breaking new ground here. This has significant policy implications. We know that the Ministry of Health wants to do this but we are not prepared to recommend to cabinet that we strike this new ground without a thorough review from the policy side."

There are, as you know, several policy committees of cabinet: cabinet committee on justice, cabinet committee on economic policy, cabinet committee on social policy. Those are the appropriate forums in which to determine whether a particular policy initiative should be pursued. Often a matter will come before a policy committee, be approved by the policy committee or be approved by cabinet on the recommendation of a policy committee, and shortly thereafter will find its way back to the regulations committee because in order to implement that policy it is necessary to have a regulation.

That being said, there are policy implications in everything that government does and sometimes fairly significant policy implications that the cabinet committee on regulations considers it appropriate to deal with in that context. That is a judgement call in every instance. I am glad that in most instances we do not have to make that judgement call, because there are not significant policy implications with most of the regulations that we deal with. Most of them, as you read along your regulations and analyse them from the perspective of this committee, are tedious in the extreme.

I invite you to read the regulation making the general legislative grant. If you still want to be in government after you have read that regulation, more power to you. Most of us, when we read the GLG regulation, do not know what it is all about when we get to page 2. That is how money is allocated to hundreds of school boards within the province and that document has to be approved. Fortunately, we do have good administrators within the Ministry of Education and good wordcrafters within legislative counsel, so in most instances we can rely on the authority of ministry officials and legislative counsel to satisfy ourselves that the regulation does what it is supposed to do.

That being said, I do not think I can tell you much more about than that



what the cabinet committee on regulations does but I am certainly open to your questions. I know that both Mr. Tucker and Ms. Wilson will help me out where I falter.

Mr. Chairman: Perhaps Ms. Wilson can go next and then we will conclude the presentation portion with Mr. Tucker. Members will note that they now have a paper from Mr. Tucker.

Ms. Wilson: When I spoke to you earlier, Mr. Chairman, your interest seemed to be to have me describe what function I have in terms of the committee so that you could better appreciate how the committee routine actually works. I am the secretary to the regulations committee and I am an executive officer in the cabinet office. Basically, the executive council office receives draft regulations from ministries that are being proposed for approval by cabinet. As Mr. Sorbara indicated, the cabinet committee on regulations generally meets once a week and we set up administrative deadlines by which ministry staff should have their draft regulations to us to be assembled and distributed to the members of the committee.

In terms of the committee, our work in the executive council office is a support function. We schedule the meetings of the committee, we advise the members of the committee of meeting times and places and we receive the submissions, the draft regulations from the ministry. We prepare agendas which, generally speaking, are based on the regulations we receive week by week. When appropriate, we liaise with ministry officials, the registrar's office and Mr. Sorbara's office.

If there is a question whether something requires policy review or requires the approval of Management Board of Cabinet before it comes to regulations committee--and that is normally the case where a regulation has financial or administrative implication, in other words, where there are fee increases or there is going to be some expenditure of money or some new staff required for a new program, for example--then the regulation would go before Management Board, usually a week, perhaps two or three weeks, before it would come to regulations committee. With the recommendation of Management Board and cabinet's approval in terms of Management Board's recommendation, then it would proceed to our committee. Again, it is really a question of compiling the draft regulations which come into our office in the appropriate numbers of copies with the information sheets attached.

Mr. Dekany is aware of the form of the information sheet, which is a standard form that ministries can use to organize the background information the committee needs to know in terms of the regulations, to summarize the purpose of the regulation, whatever appropriate background, the enabling statute, the subject of the regulation, whether it involves fees, whether Management Board approval is required, the effective date of the regulation, economic impact, communications strategy, etc. In any case, we receive those submissions, the information sheets, the regulations, we prepare our agenda and we make whatever liaison is required before the agenda is set.

We distribute the briefing material to the members of the committee and to any other minister who may have indicated an interest or just to advise them that this regulation will be coming before the committee the following week. We determine that members are available and that the chairman or vice-chairman can sit at the meeting, and at that point our staff contact the ministry officials. There is a contact person named on the information sheet, and we contact the ministry person who lets us know the ministry officials who will be attending the committee to answer questions, to explain the

information sheet and the regulation and to answer questions from the committee at the meeting. Generally speaking, this would include counsel from the ministry and it may include a policy or a relevant program person as well. Those areas are covered.

Also, of course, we invite the registrar's office. There is always attendance at the committee from that office as well. The registrar's office receives a copy of the briefing book, as do all the members. Then the meeting takes place, and my function is to record the recommendations of the committee, any concerns or comments they would like relayed to cabinet along with their recommendations. We prepare the documentation report to cabinet.

As you know, regulations go to cabinet. If they are approved, they are signed by the chairman of cabinet, then our office processes them for approval by the Lieutenant Governor in Council. At that point, presumably, they are ready for filing. We keep the originals of all the regulations in our office, in effect the council office, and then the other copies are returned with certificates to the ministry for purposes of filing. At that point it is up to the ministry as to the timing of the filing and, therefore, the gazetting of the regulations in the registrar's office.

That is a little boring but that gives you the basics or the routine of regulations.

1030

Mr. Chairman: Thank you.

Hon. Mr. Sorbara: I just want to disagree. I do not think that was boring at all. I thought that was very good. I did not know all the things that Suzanne did. I am glad somebody is doing them.

Mr. Tucker: I thought that you might be interested to know some of the functions of the registrar of regulations. The registrar has a statutory function, which is the filing and publication of regulations. That is the aspect that gives us public laws and it began in the 1940s.

There is another aspect of the registrar's office, of course, and that is that the registrar of regulations' office is the central drafting office for all government regulations. The registrar of regulations is one of the members in the office of legislative counsel. And legislative counsel, of course, is the central drafting office for all government bills. In fact, the legislative counsel office performs, in the drafting function, two functions really. It is the central drafting office, but the legislative counsel also perform the function of law clerk of the Legislative Assembly. We perform both of those functions. The lawyers in the office of legislative counsel do the drafting of both bills and regulations.

The techniques and the knowledge are the same for both and it is the same staff who perform both functions. When the government wants regulations drafted, they are then dealing with the registrar and his staff, but his staff are actually the same people, the same lawyers, who are working on the government's bills.

The paper that I have just had the clerk distribute to you describes the function in the drafting process. It is a practical paper, rather than dealing with the law. It describes for the purposes of a lawyer in a government ministry how to approach the drafting function. That is primarily what the



paper deals with, the consultation process--the communication, consultation and guiding of a regulation through the process.

Mr. Sorbara mentioned the establishment of the regulations committee. It is not that far back actually that a regulations committee of cabinet was established. It is several years ago, but it is within recent time that the government of Ontario created a committee of cabinet to deal with legislation and another committee of cabinet to deal with regulations. They were within the last several years.

I have looked at some of the comments made by persons previously appearing before this committee and I thought that you might be interested in some of the things that I could tell you about some of the topics, such as notice and comment and indexing and so on. I thought I might speak to you about those.

Notice and comment is a topic that this committee and its predecessors have been discussing for several years. I guess the object always is to be as open as possible. It follows along the same idea as having a Regulations Act and publishing the regulations and giving as much information to the public as possible.

The problem with notice and comment probably mostly is that the advantage in regulations, or one of the main advantages of regulations, is the flexibility that a government has, the ability to react quickly to situations and the ability to change the existing law to meet new situations, or to meet situations as they change, to meet more exactly the needs of the public.

One concern this committee probably should have is not to make the system too formal. The more formality that is built into a system, the longer the system takes to react to changes in social conditions or other conditions that would require a change, and 30, 60, 90-day notice periods can sometimes be quite a disadvantage. If one accepts the idea that we should have notice and comment, then I think most people who have worked within the system would agree that the best way to do it is on a situation-by-situation basis.

That is, it should be built into the government statutes, rather than have one overall statute that requires notice and comment. Because, if you go on the basis of one overall statute that requires notice and comment, you are then going to start building a long list of exceptions. The danger with lists is that you always have one or more that is left off and it causes a severe problem.

If you go along on the general principle that, yes, notice and comment is a good idea and should always be considered whenever a new statute is drafted, whenever the government prepares a new bill for introduction to the assembly that notice and comment should be one of the things that is considered seriously, then in each situation you can decide, "Should we have notice and comment on this one?"

If you are dealing perhaps with securities legislation, you may very well say: "Yes, this is an appropriate thing. Notice should be given of any change." But there may very well be other situations where it is not appropriate. Of course, everyone knows that if it is an emergency type of thing like a forest fire, then, no, you do not want notice and comment for that type of legislation. But you will also have others in between. I am sure there will be situations that no one has thought of in trying to make lists. When the situation arises it will have to be decided at that time, "Should we

have notice and comment or shouldn't we?"

There will be a number of situations where we will say, "Yes," or where the people making the policy, the government will finally decide, the assembly will finally decide: "This is not an appropriate situation for notice and comment. The flexibility should be built in." Or it may even be that in one statute you will have notice and comment for one aspect of the work and no notice and comment for the making of other types of regulations.

But on a situation-by-situation basis, then the proper decisions can be made. And I would suggest that the proper decision to be made is certainly to have notice and comment. But I would suggest the recommendation should be that it be dealt with on a situation-by-situation basis.

Now, as to indexing, that is another topic that I have some knowledge of and I would like to give you some of my ideas on it, or share with you some of the experience I have had on the topic.

Indexing started with the statutes, rather than with the regulations. I do not know of any jurisdiction that is actually indexing its regulations, but indexing of statutes has been going on for a while now. One of the previous speakers mentioned CLIC, the Canadian Law Information Council. That is the organization that has been government-supported and has been doing some indexing of provincial statutes and I think the federal government's statutes, as well.

They started some years ago, with what might be called a full index, that is, an index of almost every word in the statutes. I think the problem they started and what you wind up with is an enormously large and very costly index that takes a very long time to prepare. Indexing so far is costly and time-consuming to prepare.

I think that one has to look at the time it takes to prepare it and time factors becomes very critical, even for such things as a decennial revision. Organizations like CLIC will have difficulty meeting timetables and then, also the question arises as to the cost. They are very expensive.

The third thing is, exactly what type of index does one want? Should it be an index of the older style where it was statute-by-statute, with the topics listed under that statute? Should it be word-by-word, list every noun and list every place that noun appears all through the statutes? Or should there be some modification of that approach?

The index may have only limited value if, for instance, one of the things it does is tell you every place through the statutes that there is a reference to the Lieutenant Governor. You may have pages and pages of such references. The question then becomes, who is the user? Who uses that? Who needs that? Who wants to have that information? The question also is, how much of such information is necessary for such a person? Do we assume that the person has no knowledge of our laws, comes here completely uninformed and must be taught everything through the index? Or do we assume that the person has some knowledge of the law and needs only a single reference to find the right location to read the rest of the law?

We also have to bear in mind in that process that not all the law is in the statutes or in the regulations. There is also the judge-made law. There is



also the interaction between all those. One wonders what is the purpose when someone wants to look these things up. I think the previous speaker mentioned researchers being asked a question and producing an answer based on what is in the statutes.

If the purpose is pure research of every place in the statutes where something appears, is it necessary to have an index, or would an electronic database be a better way for them to search? Is it proper for someone to walk in off the street to a librarian and say, "Give me all the law on yoghurt"? Should the index be prepared to do that? Or should there be something less, a more subject-oriented approach, that leads them to the general area of the subject they are looking for?

That is part of the problem with indexing, and that is only looking at it from the point of view of statutes. If you come down to looking at regulations, the volume is larger, the number of topics is probably greater and the frequency of change is also greater. Regulations change every week in Ontario. The cabinet meets every week and passes different regulations almost every week. They are filed every week. They are published every week. How could an indexing system keep up with those changes?

Those are some of the considerations to be taken into account, I think. I do not propose to give you answers. I should say from the point of view of legislative counsel and the registrar of regulations, certainly the office is prepared to do whatever is necessary to accommodate the system and to accommodate what the policymakers want. Whatever the executive council decides is appropriate is what this office will do. Whatever is needed is what will be performed. The question at the moment is, what should be done? All I can do at the moment is give you some of the things to consider.

There is another type of index that is produced, of course. It is produced in the Ontario Gazette. It is produced each year in the annual volume of statutes. It is a table of all the regulations. That table is kept current in the registrar of regulations office; it is always up to date or within a week or two of being up to date. It could be provided, if it were wanted, on a semi-annual, quarterly or monthly basis, whatever would be deemed appropriate. That is available now. There has not been any visible demand, but if there were, it certainly could be provided; then it is only a question of the cost of publishing.

I think that is enough about indexing. There are some other topics that might be of interest. Question 11 on your list was, "Should the committee's examination of the regulatory process be explicitly authorized in its terms of reference?" Probably the answer is yes. I think if you read Beauchesne, it will tell you that a standing committee is bound to stay within its terms of reference. So if you substantially expand your terms of reference, then you probably should get the approval of your colleagues in the assembly.

The examination of regulations stand generally referred by statute to the committee and the committee of course has its order of reference and the order of reference says also in doing so have particular regard to the following. I think if you went outside that to look at some other issues, I think you are clearly authorized to do that if you want to. There is no problem with that. You can certainly go as far as you like, as you see reasonable, in looking at the authority to make regulations. A statute says do not look at the merits of the policy of making the regulation, but apart from that looking at the legal authority to make regulations, I do not think the committee has any problem at all.

Your question 14 surprised me a little bit. "Should the standing orders be amended to specify a period of time within which ministries and agencies must respond to recommendations?" I am not sure that the standing orders can bind a ministry. They bind the assembly. I think there is a distinction. Ministries take their orders from their ministers and their ministers together are the executive council. There is a distinction between the executive council and the assembly.

Although I am sure that in practice the executive council will ensure that recommendations of the assembly or resolutions of the assembly, are paid attention to and given serious consideration.

Some of your questions deal with the form of regulations. Question 22 for instance asks, "Can the publication of regulations be improved upon from a stylistic point of view?" I am not sure what the committee has been looking for in that. Question 23 says, "Can the format and language used be changed so as to make regulations more readily understandable to the public?"

I suppose I should comment to the committee that the format and language of both regulations and bills is a subject of constant interest to legislative council and the office of the registrar of regulations. If you go back a number of years for statutes or instance, go back and look at perhaps the language of 40 years ago. Take the Landlord and Tenant Act and look at that language and compare it for instance with Part IV of that same act which is more modern. We are constantly doing our best to improve the language and the format to make them more easily read. The format of regulations has changed a little over the years. It is gradually changing. We try not to do anything that will startle people, but we do make changes to make them more easily followed and we do improve constantly on the language. I do not think we could be accused of being deliberately obscure. The difficulties in reading some of the statutes or regulations today are caused by the complexities of the subject. One cannot always write in too simple language because after all the subject is complex. Sometimes our true audience is the court.

At times we have been told that we write in language that is deceptively simple. There is a lot of law packed into very few plain words. So I am not sure what is meant by asking about the format or the stylistic point of view of the publication of the regulations.

Explanatory notes for regulations are a topic that concerns us. Regulations are not quite like statutes; they are often very complex and contain a number of different subjects. The work of preparing explanatory notes would be one more formal problem in dealing with the regulations, one more thing that might cause it to take a little longer to prepare regulations. We have a pretty good turnaround time in the office of the registrar of regulations. In general, I think you can say that the turnaround time is not more than one week for the average regulation. If we go on to do more things, that turnaround time may increase slightly. It may not be significant.

1050

You have asked about the main heading of regulations; should it be more descriptive? I think that in looking at regulations, they are all listed under their individual statutes, and one knows from looking at the heading of the statute what the general topic is. One of the main considerations in assigning headings to regulations is to differentiate one regulation from another so that the user knows which one to go to. We try to make them descriptive, but we also must stay brief. There is a tradeoff. If we could do better, I think we would.



There are other questions that you have on your list dealing with the Planning Act and the Parkway Belt Planning and Development Act. Those two do not cause a problem that the registrar's office cannot deal with. It is not really a problem in that aspect at all. I think that our interest in whether or not they should be treated as regulations probably developed with the production of the revised regulations in 1980, when we noticed that there were a fair number of amendments to those regulations and we realized that they would take up a fair amount of space in the volumes. In the book it might take close to a full volume for just those. That was dealt with at the time by simply creating a schedule.

Most of those amendments are actually exceptions for individual parcels of land. One could question whether they are true regulations. But it does not create that great a problem for our office. So whatever policy is decided upon I think the registrar can live with either way.

I think those are all the comments that I would care to make at the moment. I am willing to answer any questions, of course, that the committee members might have.

Mr. Chairman: I have a number of questioners from the committee already, but there are a couple of general topics that we have had come up again and again.

I thought they could be addressed, perhaps particularly by Mr. Tucker and Mr. Sorbara, to deal with the concept inherent in the current system of flexibility, convenience to some degree and formality versus what the vast majority of the witnesses had to tell us, in their view, ought to be in the system, which is a better quality of regulation, a more understandable set of regulations, a more understandable process and greater fairness to the people who are affected by them.

There was an implication, particularly with respect to Mr. Tucker's comments, that there may be some minor changes but that basically it works pretty well the way it is. I do not want to be unfair in characterizing your comments, because I think in some sense you were putting things in thought-provoking ways, which is helpful for the committee, but I am wondering if we can get some comments about your views about how it works and whether things like notice and comment are likely to produce better-quality regulations and ones that work more fairly and are more accessible to people.

Mr. Tucker: Dealing with notice and comment and fairness, I think there you are talking about whether the policy in the regulation would be more fair. I do not want to give the impression that anyone in the legislative counsel's office or the office of the registrar of regulations is against the idea of notice and comment; we are not. All I am suggesting to the committee is that it is a topic which will go across the entire spectrum of regulations and therefore you have to look at what will be the effect in practical terms and particular cases.

I think that if we do accept the idea of notice and comment, then we have to say that notice and comment should be applied on a situation-by-situation basis. It is probably wiser not to engage too much in generalities. The idea of giving notice, of course, and accepting comments--in fact, they are more than comments; they are very interested statements from interested parties, and they are perfectly valid statements that I am sure any government is happy to receive at any time.

In fact, with most operating programs, this is the process that takes place informally anyway. To formalize that process in appropriate cases would seem quite the proper thing to do. The problem is simply to find the appropriate cases and the proper time to do it. That is why I suggested that it should be on a situation-by-situation basis. It should be built into the enabling legislation for each particular regulation.

Mr. Chairman: What act should not have a provision?

Mr. Tucker: At the beginning, we can say emergency acts, of course, at one end of the spectrum. If you are dealing with forest fires, which is the usual example, you would not want notice or comment. The government has to act quickly to close off an area, for instance, by changing the regulation. Is it appropriate to give notice and comment if you want to increase a fee by 10 cents? By the time it is all done, the season may have ended.

There are, I am sure, a number of other situations that none of us has thought of that will turn up once a review is made to determine which ones should have notice and comment and which should not. At the other end of the spectrum there are cases where, obviously, notice and comment is desirable; some of the statutes have it now.

Mr. Chairman: But surely the question of emergencies is not one you predetermine at all. I just am not very clear in my mind what classification of action, say, inherently never ought to have notice and comment.

Hon. Mr. Sorbara: If I could just comment on that, I think as you pursue the idea of notice and comment, you really have to separate, as Mr. Tucker said, the business of making policy from the business of making regulations. A great deal of the regulations that ultimately emerge are singularly uninteresting in their form and have been fairly exhaustive in terms of the amount of comment and input that has gone into making those regulations.

Let us take the example of a regulation setting fees for a provincial park. First of all, the statute says, "The Lieutenant Governor in Council" or whatever "may make regulations setting fees." That is just the authority to establish the fees. That says that every time you want to set a fee, you do not have to go back to the Legislature and pass a bill establishing the fee. But as a particular ministry--whether it be Natural Resources or Tourism and Recreation, depending on the jurisdiction--decides that it wants to set the fee, it will go through a very extensive degree of consultation, from taking the fee structure as it is now to looking at the world and at what the competition or the private operator is doing and to determining through the political process what the government agenda is. Is the government determined to cover costs? Does the government want to make a special provision for young people, seniors or a particular class of individuals? Does the government want to enhance or restrict the use of parks?

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All of that stuff is the subject of very extensive consultation with the world generally. It only comes to a regulation once all that process has taken place. Sometimes that consultation has a great deal of political input because it is a policy issue and a public issue, and sometimes it has a lot of bureaucratic input because it really is of a bureaucratic nature.

Let us take another example. We have regulations from the Ministry of



Agriculture and Food coming to our committee virtually every week, making little adjustments in, for example, the Crop Insurance Act (Ontario), which is a system, federal and provincial, that is very complicated and sort of works; but when you want to amend it, when you want to make a little alteration to it, it has to be in the form of regulation. All the notice and comment and consideration goes on within the Ontario Milk Marketing Board if it is milk, the pea growers if it is green peas, the cucumber growers if it is cucumbers and the Crop Insurance Commission of Ontario, and generally they work it out.

In two years and many months as chairman of the cabinet committee on regulations, I cannot remember an instance where an aggrieved party has come to me and said, "How could you have made that terrible, draconian law, which I knew nothing about, which will mean that thus and such happens to me, that my business is going to falter?" Those kinds of decisions are made at a policy level and are considered, as a matter of policy, in the cabinet process, the caucus process and the assembly process.

By the time we get back to regulation, my God, if there was ever a world in which there was consultation and comment and an ability to have an input before the thing actually becomes law, it is there. To superimpose on top of that a statutory responsibility, even in particular statutes, to say there shall be notice and comment really is to say we will not regulate in this area, we will not give the government the flexibility to flesh out this statute and make it work in the real world on the ground in Ontario. We will come back every time to a political, and almost legislative, process in order to get the work done.

You have to remember that this is the nuts and bolts and machinery of government. It is important enough that it has to go through a process, almost in every instance, resulting in an order in council. That forces the system to do a lot of things. The cabinet, the politicians, the MPPs who sit on the regulations committee are actually going to see it. We do not want to put anything in there that is going to be offensive politically to that review aspect. But the real work of shaping the nuts and bolts and determining how to make that policy come alive as a practical matter really does go on on an ongoing, everyday basis.

It is happening out there. Where notice and comment is formalized, I think that is for a different reason. That is because it is important to require constituencies and specific organizations within Ontario to have a more formalized input: sending out notices, stuff like that, and then ensuring that all the comment is in. From my perspective as a politician, I reiterate, no one has come up to me and said, "Your regulation was arbitrary, unfair and was done in the absence of my ability to have input into the process." That is my personal experience.

Mr. Chairman: We did have a witness, I think it was yesterday morning, who said exactly that about a current regulation.

Hon. Mr. Sorbara: What regulation was that?

Mr. Chairman: With respect to the travel industry and Mr. Wrye's announcement in December, I believe, to come into effect, if memory serves me, July 1 of this year.

Let me preface my next comment by saying I am about to turn to the people who want to ask questions. I do not want to seem argumentative, but I think the evidence you have given today is valuable to the committee, even

though it runs contrary to almost everything else we have had by way of evidence as to the consistency and effectiveness of consultation.

The suggestion has been fairly consistently that most of the time most of the consultation has been good, but there is, in fact, inconsistency certainly between ministries and even within the types of regulations within a given ministry. There have been a number of witnesses who have indicated they have had difficulty because sometimes they are consulted and sometimes they are not and sometimes the process is one way and sometimes it is another.

I say that not to be argumentative but just to try to put it in the context of why I started asking questions about the fundamental issue that underlines the submissions that we heard. They were saying they were not getting as good a result as there would be if you had certain changes. It is important that we hear all of the sides--

Hon. Mr. Sorbara: You should appreciate, though, that virtually everyone whose rights and opportunities are restricted by the regulation will say that they did not have enough notice and sufficient opportunity to comment. For that you ought to read, "I do not like what they did and I think if I had had more time I would have been able to change their minds." That is the practical reality of lawmaking. If your laws--and these are laws--are not making hard choices, probably they are not very important.

The travel industry thing is an interesting one because that came on rather quickly. The issue as to the cabinet committee on regulations was that this is coming on rather quickly. As a political matter, as a policy matter, is that what we want to do? That is the issue ultimately for government to decide: whether in certain instances it was to come on rather quickly to remedy a situation which, as a matter of policy, the government finds unacceptable. There is an accountability there, the ultimate accountability being a consultation with the people on what your record is.

Mr. Chairman: Fair comment.

Mr. Tucker: There is, of course, one other category that comes to mind in dealing with regulations. Perhaps notice and comment is not appropriate if a change in the regulation is related, for instance, to the Treasurer's budgets. You may have something under, perhaps, the Fuel Tax Act where there cannot very well be notice and comment. The change is announced in the budget and then introduced immediately, just as budget bills are. There would be no point really in having notice and comment and some sort of public debate on whether or not the Treasurer's budget is going to be accepted.

Mr. Chairman: In fact, on occasion that does become a matter of debate to minority governments, but I appreciate your comment.

Is it your view that the Ottawa system, which has a broad requirement of notice and comment and then a series of exceptions, is simply not adequate? The evidence we have heard is that something like 40 per cent of all regulations do not go through the ordinary notice and comment primarily because of a cost-benefit analysis, that the cost of a prepublication was greater than the whole thing was worth, rather than the kinds of exceptions we have heard today. None the less, they have a broad rule and then, frankly, broad exceptions.

Mr. Tucker: Cost-benefit has been applied against regulations in the past too. I think that has come into the publication of certain types of



regulations in other jurisdictions. I am thinking of a situation that arose in British Columbia some years ago. I am not sure that cost-benefit is a valid reason for deciding whether or not to publish when you are dealing with a public law. I think the question really has to become, is this is an appropriate situation where there should be delay if it is necessary to receive the comment? Is this a situation in which it is necessary to receive the comment in this way?

I think that rather than produce a general rule and then hope to produce all the exceptions, it is wiser to produce a policy that we will always examine this each time we pass a new law.

Mr. Chairman: You did not really, totally tell me whether you specifically approve or disapprove of the Ottawa system.

Mr. Tucker: I think the Ottawa system is relatively new and no one knows how well it will work. I think they will continue to produce exceptions. They come back to the same result and I think it is probably more efficient to look at each situation in the first place.

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Ms. Wilson: This is just a point of detail. I know we have mentioned this information sheet before, which comes attached to draft regulations that go to the cabinet committee on regulations, but there is a part of that information sheet that asks for background comments on which it says specifically, for example, "ministry announcements, meetings with special interest groups, consultation with industry, public hearings, publications." There is another section on communications strategy, so it is presumably how the ministry intends to communicate back these changes to the people who are interested and affected.

In fact, the ministry staff and the minister recommend the regulation with this information sheet completed, detailing what consultations there have been and with whom. Obviously, the ministry officials are open to questions on that at the committee and it also follows through the cabinet quite often. This kind of information is included in the documentation and is reported to cabinet, so the minister is subject to discussion and question on that aspect of the regulation when it is dealt with in cabinet.

Mr. Chairman: With the possible exception of category 12, I suppose, what reason is there for not publishing this to help tell people what the regulation is all about? I am talking about the information sheet for regulations.

Hon. Mr. Sorbara: What reason is there for not publishing the regulation or for publishing the--

Mr. Chairman: In addition to publishing the regulation, making public either this particular form of information sheet or something that would look reasonably like it.

Hon. Mr. Sorbara: I think Mr. Tucker has answered that. The reason is that if there were a statutory requirement to publish it, what you would simply have is an elongation of the process where, in many instances, an elongation of the process will not give rise to a better law.

Mr. Chairman: I am not saying in advance. I am saying that when you pass the regulation--

Hon. Mr. Sorbara: When we pass the regulation, the regulation itself is published.

Mr. Chairman: But it does not tell you the background comment, the reasons for the proposed regulation.

Hon. Mr. Sorbara: Certainly not. It would be entirely inappropriate to publish that, to explain how the government proposes to communicate that strategy or what background comment is appropriate. That is an internal document. I would be very surprised if at the federal level you would find them publishing their internal documents which provided background into why that particular regulation was being made.

Mr. Chairman: In fact, that is a lot of exactly what they do. I do not think it is fair to describe it as being exactly like this because it is not, but the gist of it is. They have what they call a regulatory impact analysis statement. It gives a description, alternatives considered, consistency with regulatory policy and a citizens' code which is a policy that they have developed with the principles that ought to be inherent in regulations. Anticipated impact is another category. There is paper burden on small business, consultation, compliance, which refers to statutes, and then there is a person in the government to contact, including address and telephone number, which I reiterate is not exactly what the format of the information sheet for regulations is, but it is not that dissimilar.

I raise that because we are interested in knowing, if we are not to do it, why not to do it?

Mr. Tucker: I do not think they do that in every case, though, do they?

Mr. Chairman: I think they do it in every case.

Mr. Tucker: Did not one of the previous speakers say that in many cases those assessments are not produced?

Mr. Chairman: I am not so expert on the details of that act to be able to say that categorically they never do it, but as I understood the evidence, it is the general rule, that when they produce a regulation they produce that consistently. I am not talking about prepublication, but at the time they actually produce the regulation.

Hon. Mr. Sorbara: It is an interesting suggestion. It might be informative or the community might be helped if it were to, say, go through three or four weeks' worth of regulations that are enacted by way of order in council and make a determination within the committee as to whether, having read and studied those regulations, an information sheet of that sort would be helpful.

I think we have to be concerned about not undertaking exercises that have great cosmetic value but in substance are not really very effective. It may well be that, at the provincial level, we are regulating the nitty-gritty. I think, over and over again, of the number of small amendments to the crop insurance plans that are in existence in the province, and of the fact that every time there is a change in a funding structure in National Health and



Welfare at the federal level, we have to make a consequent amendment to a regulation within our jurisdiction. That is the bulk of the material.

Once again, I suggest that what has surprised me is the lack of instances where I have had late night calls from people who are aware that a regulation is coming forth and feel they have not had an opportunity to comment on that regulation or feel they are going to be hard done by as a result of the regulation.

Mr. Ruprecht: That is because they do not know your phone number.

Hon. Mr. Sorbara: It is published, though, Tony. It is right there in the book.

Mr. Chairman: It is a well-known fact that you head the appeal section, you see. I do not think anybody knows there is a way you can appeal. That is one of the complaints we have heard quite consistently, that there is nobody you can go and talk to.

Hon. Mr. Sorbara: On regulations?

Mr. Chairman: On regulations generally. It is the government, a sense of monolithic enterprise rolling over the interests of a given group. Speaking for myself, I do not discount at all the comment you made that some people are just unhappy, that they think if they had more time, they could have persuaded the government to do otherwise than how the government proceeded.

Having said that, I think we heard evidence that went far beyond that issue. It went to the issue of whether the government was producing the best quality regulations with the most effective element of consultation, given all the stakeholders on a given question.

Mrs. Marland: May I interject here? I think it is about 35 minutes since the deputation finished its presentation. Most of the committees I have sat on in the last three years take questions from committee members first.

Mr. Ruprecht: I was wondering when you were going to say that.

Mr. Chairman: I think it is a fair criticism. In fact, it was my intention some time ago to try to get to them. You are first on the list, I might add.

Mrs. Marland: Thank you. Mr. Sorbara, I was very interested in the process as you were describing it. You were saying that all the new regulations or changes to existing regulations are processed through the policy committees. Do the policy committees then present those new regulations to the complete caucus?

Hon. Mr. Sorbara: To the Liberal caucus?

Mrs. Marland: Yes.

Hon. Mr. Sorbara: No. I think we are talking about the policy-making of cabinet. Whether a particular issue will arise out of caucus and have thorough caucus discussion or will arise out of a ministry and not be referred

to caucus, is a political decision that I think a governing party makes issue by issue.

Mrs. Marland: You described the cabinet committee on regulations as being a committee made up of cabinet ministers and noncabinet ministers, who I presume are back-benchers. Am I correct?

Hon. Mr. Sorbara: Yes. They may be parliamentary assistants and that may change, but they are nonministers.

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Mrs. Marland: Does the makeup of that cabinet committee on regulations rotate and change from time to time so that other members of the caucus get to sit on it, although they are not ministers or PAs?

Hon. Mr. Sorbara: It is not the same system as we have in a legislative committee. There is no right or power of substitution. Whether or not some members would be removed from the cabinet committee on regulations and replaced is a decision that I suppose is possible and the Premier may make it. Thus far, during this administration, he has not chosen to do that. He set up a cabinet committee on regulations. I am the chairman, Mr. Wrye is the vice-chairman and there are a number of nonministers who are members. That composition has not changed thus far, although cabinet may choose at any time to do that.

Mrs. Marland: You described them as being nonministers. Then are you saying that although they are nonministers, they are all parliamentary assistants, or are some of them back-benchers?

Hon. Mr. Sorbara: I do not know. I am advised by Ms. Wilson that they are all back-benchers; that is, not ministers, not parliamentary assistants.

Mrs. Marland: That is good. At some point, I think, from your description, those regulations are processed through the policy committee. Is that correct?

Hon. Mr. Sorbara: No, that is not quite correct. I do not think I was as clear as I wanted to be on that matter: Where a regulation reflects a new policy issue or a substantial change in policy within the government, the policy issue will have been taken up by a policy committee of cabinet, not the regulation itself.

For example, let us take the business of what the fees will be in provincial parks. Assuming that we are not simply going to have a four per cent increase in fees across the board, something as simple as that, then a cabinet committee, probably the cabinet committee on economic policy, will review the submission from the Minister of Natural Resources on what he proposes as a new policy initiative in the area of fees for provincial parks. The cabinet committee on economic policy will analyse that. Deputies will analyse it as well at the deputies' meeting and cabinet will ultimately make a determination to accept, reject or amend the minister's suggestion.

Coincidentally with that, Management Board of Cabinet will be reviewing the matter because it is a Management Board issue. Revenue and expenditures for the government always have to go before Management Board. Once all that work is completed, or certainly once the policy work is completed, then the



regulation gets drafted. It may well be that Mr. Tucker's office is working on what a regulation might look like, assuming that this policy is going to come into place, but a regulation will be drafted subsequent to the policy determination having been made. Then the regulations committee will look at it and recommend it on to cabinet. Those fees are not operative, are not enforceable until such time as an order in council has been made making the draft regulation into law.

Mrs. Marland: At what point do any of these changes, especially a policy change, come before the full government caucus? For example, I might give you one that did not end up being a regulation change, although I understand it could have been. That was beer and wine in the corner stores. I understand that did not need to be legislated; it could have been a regulation change under the existing act. You would have other examples that you could use that actually did go through a regulation-change process, but that would be a very high-profile, political policy issue for the government. Would something like that go through the process that you have already described and eventually be discussed by the entire government caucus?

Hon. Mr. Sorbara: I think Mrs. Marland's inquiry is into the functioning of the governing party and the relationship between the expression of government policy and the operation of the government caucus. Frankly, I do not think it is an appropriate subject for this committee.

I do tell her openly that the issue of beer and wine in the corner grocery store was a matter that was exhaustively discussed on many occasions within the Liberal caucus, as I am sure it was within the caucuses of the official opposition and the third party. Behind the question, though, I think is the suggestion that there should be a point where regulations come before caucus. That is simply not the case. I think you have to understand that the regulations committee of cabinet is not the initiator in any instance of a regulation.

Mrs. Marland: I understand that.

Hon. Mr. Sorbara: It is solely a reviewing body, looking at regulations prior to their presentation to cabinet and is ad hoc in that respect by virtue of the fact that cabinet could make regulations, and often does make regulations, without the cabinet committee on regulations looking at them.

Mrs. Marland: But obviously the main thrust of my question is, can regulations be changed then by only the bureaucrats introducing the subject to the policy committee, and the policy committee then reviewing it, and then it goes to the cabinet committee on regulations, so that the only people then involved are the people who sit either on the policy committee for that particular area of subject or the government cabinet committee on regulations.

I am trying to understand how someone who is elected to represent the people and who is a member of that government caucus has input and comment on behalf of the people they represent. Maybe it is something in tourism or whatever. How do they have input before that regulation is approved, as a lowly back-bencher? I guess the answer is that unless it is the choice of the executive council of the government, not necessarily do all of those new regulations, which reflect policy changes, come before the entire caucus.

Hon. Mr. Sorbara: I think your assumption is simply wrong. I do not know how your caucus works, but I know that within our caucus there is--

Mrs. Marland: I can tell you how our caucus works.

Hon. Mr. Sorbara: --broad-based discussion on policy issues. There are also very extensive policy discussions on government policy within the policy-making committees of cabinet, but the regulations committee--and I think that is what we are here to talk about--is not a policy analysis body.

Your question was, how does the individual member have an opportunity to have input into that process? I think you know the answer. The answer is self-evident. There are policy committees of cabinet. If I, as a member of cabinet, have an interest in a particular policy issue, although I do not sit on a particular cabinet committee, I may well decide that I want to speak to that issue at that cabinet.

Mrs. Marland: You mean you as a member of caucus.

Hon. Mr. Sorbara: No, me as a member of cabinet. I, as a member of caucus, may well do the same thing. Indeed, as a cabinet minister, I regularly hear from my caucus colleagues, and opposition colleagues, about the fact that: "I understand the ministry of X is proposing to do Y. Let me tell you what my constituents think about that. They think you are nuts," or, "They think it is very good and are very glad to see that you are doing that," or whatever. That filters into the political discussion, but that is a policy issue.

Certainly, in my two years and some months as chairman of the regulations committee, I will not allow the regulations committee to break new ground in the area of policy. It just does not happen because ministries know that they are not going to run something by the regulations committee that has not been clearly mandated as a result of the act and as a result of policy considerations by the government.

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Mrs. Marland: My final question also refers to something you said. I guess only Hansard will show whether I interpret what you said correctly. I think you said that most cabinet members cannot know the legislative act after page 2.

Hon. Mr. Sorbara: No, I said the general legislative grant regulation.

Mrs. Marland: Sorry, I meant to say legislative grant regulation.

Obviously, this is not an attack on your cabinet. If that is what you are saying, I am sure it probably would apply to every cabinet. But if most cabinet members cannot know the legislative grant regulation after page 2 because of the complexity of it and the language of it and the volume of it, which I assume is what you were referring to, yet these grants are the very grants that appropriate government funds for, to use your own example, the expenditure to school boards, then how can decisions be made in that process that are in the best interests of the school boards?

That example you gave is an especially controversial one because of the tremendous needs and variance with that particular category of funding. Where



does it work that the cabinet, which has to make the political decision in that case over the bureaucratic decision--obviously the bureaucracy is saying, "We don't have enough money," and at some point the cabinet has to say, "We have only limited money but this is where it has to go"--how are they able to do that if they do not really, either through staff and through a system, understand the act itself or, therefore, the formulae that may be in that legislative grant process?

Hon. Mr. Sorbara: I think if you review my answer to your previous questions, you will find the answer to your current question. The issue of funding, for example, and levels of funding and allocation of taxpayers' money to school boards is a political and policy issue within cabinet and the policy committees of cabinet. There is thorough and exhaustive discussion of the extent of expenditures we will make, and that language is simple and straightforward and understood by the members of the executive council making those decisions.

Taking those policy determinations as to what our expenditures will be and shaping that into regulatory machinery that will actually do the job of making those allocations is a very complex, sophisticated process. We are the directors and the designers. There are craftspeople in the offices of the registrar of regulations and the legislative counsel who actually do all that. I have had no instances, once again, of whether it is in school funding or anything else, where someone has come to me and said, "Your policy was such and such but the drafters got it all wrong."

In other words, I tell you frankly, it is not necessary or appropriate for me to understand a 100-page regulation of complex formulae and student-teacher ratios and all that stuff that goes into legislative grants, because that is the job of the bureaucrats we have doing that stuff. They work hard and they ensure that what cabinet has decided as a matter of policy gets incorporated into, in certain instances, very complex formulae.

Mrs. Marland: I do agree. I know it is a complex formula.

Hon. Mr. Sorbara: I invite you to read the general legislative grant regulation.

Mrs. Marland: No, I am well assured of the complexity of it. That is why I realize that there is a tremendous onus and responsibility to have as much input as possible into that whole process.

I will yield the floor to some other members of the committee.

Mr. Ruprecht: I wonder whether Mr. Tucker and the minister realize that their presentation today has sparked such great interest that it has attracted at least three MPPs to these tables today, just as an aside.

Mrs. Marland: Three what?

Mr. Ruprecht: Three new faces to the table. Your presentation is the highlight of--

Mr. Mahoney: My secretary told me to come here this morning.

Mr. Ruprecht: I am sorry about that.

Mr. Chairman: Could you please speak into the microphone a little more?

Mr. Ruprecht: My light is not even on, Mr. Chairman. Is this the mike you are trying to get my words of wisdom from?

I would like to ask you a question about your comments on the whole issue of indexing, and then I have one other minor question for Mr. Sorbara. Did I understand you correctly when you were describing the issue of indexing--

Mr. Chairman: Excuse me. I am sorry to interrupt you again but you are going to have to sit up in your chair for Hansard to pick you up.

Mr. Ruprecht: Testing, testing.

I want to come back to your statement that you made previously on the issue of indexing. I have already expressed an interest in your telling the committee whether I am correct in my understanding that you had said that indexing was too complex or too complicated a task to even undertake. Is this correct?

Mr. Tucker: No, I do not think I said that it is too complex or too costly to undertake. It is a complex and costly area, and I think that the committee should be aware that it is. Involved in that is the question of what type of index should be prepared. In fact, CLIC, the Canadian Law Information Council, is undertaking now a new five-year study of the type of index that should be produced and the market for it and the costs that will be involved. It is an area where even the most expert people now feel they have to do a new study and they are talking about statutes.

All I was saying is that the regulations are of greater volume and greater complexity and have more frequent turnover, so it is a subject to approach with some caution. I am not saying it should not be done at all. I am saying it does require investigation before one can decide when to proceed and how to proceed. If the decision is made that it will be proceeded with, those are some of the issues that must be considered afterwards.

Mr. Ruprecht: We had some people who made presentations to us indicating that, as the chairman said earlier, in this context of democratic government it was important to receive adequate--

Mr. Chairman: I am sorry to interrupt for at least the third time but I am being instructed that you are not being picked up by Hansard. I do not know whether that particular seat is the problem or just the fact that you consistently turn away from the mike. None the less, they are asking me to remind you to sit and face the mike when you are speaking. I am sorry to interrupt.

Mr. Ruprecht: I have been instructed the third time but I am not sure what I am doing wrong.

Mr. Chairman: If you speak louder, it will do.

Mr. Ruprecht: As the chairman indicated earlier, we have had some deputants, some persons who made presentations to this committee, that in the context of democratic government they felt it was important to receive adequate notice and information and then some research capability to make informed opinions to the government and to some of the regulatory commissions or whoever had made or was in the process of making regulations. Consequently, it was important to them to get notice and to be adequately informed.

I am just wondering whether you think that the system in place now is



adequate in its present form. Does it present enough information? Does it provide enough time for the deputants to make their case known? I do not want to prejudge your answer but I know, having sat on the regulations committee previously and having had some input there, that even some ministries are providing intervenor funding.

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From that perspective I think that the system, as organized, is trying to provide an adequate framework for making intelligent comments. I am wondering what you think, where the improvements could be made so that no one will come to this committee or any other committee of government to say, "We feel that in a democratic form of government, we are not adequately informed or do not have the adequate mechanism to make our presentations to the government."

Mr. Tucker: I should say at the outset that I am not involved in that aspect of the preparation of regulations. That aspect of it would seem to me would be the area of the policy developer, the program director, the person who is in contact with the public. If it is a regulation that governs the operation of a section of the private sector, the person directing that program will be the person who deals with that area of the public and who knows whether there is adequate communication.

My comments were not directed towards that aspect of the consideration, the policy development of a regulation. I do not think I should be directing comments towards the policy development area at all. It is fair to say that everyone is concerned that there should be openness and communication. As to the best method, what you are talking about when you talk about notice and comment is a formal legal method of communication.

My comments were directed solely towards that formal legal process. We are all aware, I think, that there is another informal process that is absolutely necessary to make the regulations work. Even the program director is not going to bring in a regulation without consulting the people whom his program governs. He or she is certainly not willing to be surprised with comments about things that were unknown to the director.

All I wanted to mention to this committee is that when you produce a formal legal process, you do so in a way that will have the best results and will enable the system to operate better rather than possibly hinder the system. It seemed to me that looking at the regulations or looking at the sectors, sector by sector, situation by situation, as you produce new statutes is the better way to go rather than hoping that when we run into a problem, we will add another exception to the act.

Mr. Ruprecht: Thank you very much. I have one final comment. Since I have been on the cabinet committee on regulations under the very able chairmanship of the Mr. Sorbara, who probably has represented my political philosophy more than any other minister, I might add--but you probably know that already anyway--I am learning something today. That is, as Ms. Wilson pointed out, that--and I am speaking into the mike. This is the fourth notice I am getting here. I do not know how better I can do this.

Mr. Chairman: At least the last one did not come from me.

Mr. Ruprecht: I am interested to learn that the cabinet committee on regulations has, in fact, members who are not cabinet ministers. I am

wondering, for the information for this committee, whether this is a new change. Previously, when I attended the committee meetings fairly regularly--

Hon. Mr. Sorbara: And I will confirm that.

Mr. Ruprecht: --I had not seen some parliamentary assistants or back-benchers who had been members of the committee. If indeed there has been a change, I am very happy to hear that now members who are not ministers are members of the cabinet committee on regulations. Could you comment on that?

Hon. Mr. Sorbara: I can comment briefly. As I understand the history, prior to 1985 under the previous government, the cabinet committee on regulations was made up of parliamentary assistants. Mr. Ruprecht is correct that, during our first term in office, cabinet committee on regulations was made up exclusively of ministers, Mr. Ruprecht being one of them and I was the chairman.

There was a determination made for one reason or another by the Premier (Mr. Peterson), in forming the government after the election of September 10, that the cabinet committee on regulations this time around would be chaired by a minister, that the vice-chairman would be a minister and that the remaining members would be so-called back-benchers. That is new. I think this is the first time around and I can tell this committee that it has worked out very well.

There is a great deal of interest by the nonministers who are on the committee in the regulation-making process, in the substance of the regulations, and the debate--not surprisingly really--in this committee is of equal quality, interest and relevance to what it was during our first term in office.

Mr. Pollock: Minister, I am sure you are aware and everybody assembled here is aware of the fact that recently Joe Clark and Flora MacDonald have been fined because their ministry and ministry officials did not provide necessary documentation and information to a certain person within a given period of time. The judge in his decision must have known that there were sufficient teeth in the regulations that they should have. Are there sufficient teeth in the regulations here in Ontario to do that? If there are not, do you think there should be?

Hon. Mr. Sorbara: I am not as familiar as I probably should be with the facts of the case in which Miss MacDonald and Mr. Clark were found, I think, to be in contempt of court and therefore liable, as ministers of the crown, for a fine. I do not know under what regulation there was an obligation to provide information which was not provided.

The answer to your question, Mr. Pollock, is that it would depend on a particular regulation. Some regulations are very stringent and some regulations are very loose. Some regulations, obviously, do not have any penal provisions at all. If I understand that case and the analogy you are making, I think it would simply depend on the regulation. We do not legislate in the area of criminal law in the province, although, as I recall, the matter did not involve criminal law in the case of Mr. Clark and Miss MacDonald.

Mr. Pollock: I am not that familiar with the case either, totally, just what the newspapers and the press are saying.

Hon. Mr. Sorbara: The extent to which there are teeth, as you say,



in a particular regulation would be a matter of determination under the particular statute, would be a matter for consideration within the ministry shaping what the regulation ought to look like and then would be considered by our committee as we consider a recommendation to cabinet.

Mr. Pollock: I took from what---

Mr. Chairman: I might assist, Mr. Pollock, by clarifying two aspects. First of all, the regulations are not supposed to contain penal provisions under the current rules. Part of our instruction as a legislative committee is that we are to examine; in practice that is done by our counsel. I do not pretend to be an expert on all of the legal issues that were up before the court in the Clark case, but my understanding was that the noncompliance was noncompliance with a court direction to provide evidence within a certain deadline as opposed to a government regulation.

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Mr. Pollock: I took from what Mr. Tucker said under question 14 that there was a really grey area whether they did or did not have to do it within a certain period of time. That is just an off-the-cuff comment. He might want to comment on that.

Mr. Tucker: I was just commenting on question 14, on the relationship between the standing committee and the Legislative Assembly. I think it would be a different case in dealing with the court.

Mr. Mahoney: Not to beat the issue of notice and comment to death, but you used a couple of examples. One was provincial park fees; another was a 10-cent general increase somewhere. Is there a difference here? Under notice and comment, if you put out some form of notice and invite comment, are you doing that to shape regulations or are you doing that just to let people get it off their chests?

Hon. Mr. Sorbara: In the instances where notice and comment is required by statute, my understanding is that is to help the regulation be shaped in a fashion that will make it work and be the result of a formalized consultative process, not just to deal with flak but to really make it work. The situation I think of is in the securities industry where consultation is extremely important.

Mr. Mahoney: Would you invite comment at a committee level, for example? Is it just written submissions?

Hon. Mr. Sorbara: At the committee level?

Mr. Mahoney: No. In other words, if we are putting out a notice that a new regulation in the securities industry is coming down and comment is invited, would that be in the form of public meetings, written submissions to a committee, to a minister?

Hon. Mr. Sorbara: My understanding, and I will ask Mr. Tucker to expand on this if he can, is that the comment is to particular officials within a ministry charged with the responsibility of garnering various comments.

Mr. Mahoney: To staff.

Hon. Mr. Sorbara: Staff within a ministry. I suspect there will be

occasions where a specific task force is established to be the recipient of comment and to ensure that a formalized consultation process has been completely undertaken.

Mr. Mahoney: If we were, for example, to increase park fees or GO Transit fees or whatever it happens to be, is there a requirement to give a certain amount of advance notice, if not comment? In other words, you are not looking for input, but you put up notices or you publish in the newspaper a statement that effective June 1, 1988, park entry fees will go up from \$11 to \$15 or whatever.

Hon. Mr. Sorbara: Unless you comment and raise your voice sufficiently loudly, then the government will not do that. No, there is not. Oftentimes a ministry will publish its intention to do a particular thing.

It is the government that has to set the fees. Generally, if government adopts a radically new fee structure, it will make a statement, just issue a press release, "The government intends to increase park fees by 200 per cent." That is big news. It is not law when government makes that announcement, but it is big news. If the government can withstand the pressure it is going to get after it announces its intention to do that, it means it has withstood all the notice and comment. The fact that we thereafter make a regulation making that actually happen is really, in that instance, far too late for appropriate notice and comment.

Mr. Mahoney: Two more questions. If you are giving a notice and inviting comment, is there some standardized way of putting the notice out? Do we go to all major dailies? Is there a system? Does the committee decide that? How far do you go with that notice?

Hon. Mr. Sorbara: Certainly our committee would not decide that. Perhaps Mr. Tucker would have the answer to that. I do not know. I am the politician in the process, not the official.

Mr. Tucker: If I can answer the second question first, the method of publishing depends on the topic. That is one of the reasons I was saying that notice and comment should be dealt with on a situation-by-situation basis. If you are dealing with something that affects a specific area then you want to be sure that the people in that area receive the notice.

It is often the case, for instance, that you may say there must be publication in a newspaper having circulation in the area that is affected. Publication depends on the nature of the area; if it is in the Metropolitan Toronto area, you may say every day for four days or something, but if it is in an area that does not have a daily newspaper, then you may have to say that it is once a week for three weeks. It depends on the nature of the problem and the nature of the regulation--

Mr. Mahoney: Who makes that decision?

Mr. Tucker: It depends. If you can tell the type of problem when you are drafting your statute, you put that type of decision right into your statute; you give the members of the assembly an opportunity to debate whether that is an appropriate notice for this type of problem.

Mr. Mahoney: I think that is pretty critical. I agree with the minister that often people who are unhappy with a decision will simply come in with the comment, "We didn't get a chance to speak on this." So it is very



important, if you are going to go out for notice and comment, that you do give it a broad enough brush of notification to try to avoid that criticism. At least if the notification is put in place, if it affects a certain community, then the onus is on that community to respond rather than criticizing the government.

One final question to the minister: Do you feel we need to streamline regulations into laws or vice versa--more laws, more regulations and, conversely, fewer of one or the other?

Hon. Mr. Sorbara: That is a difficult question to answer. Although I think it is obvious from my testimony here that I find the process that works right now more or less satisfactory, I feel that the responsibilities of the cabinet committee on regulations are very significant ones in a sort of watchdog way.

I guess my view is that one ought not to legislate or regulate where that is unnecessary. My view as well--and I think it is substantiated in fact--is that within most statutes currently being passed by legislatures like ours there is broad power to make regulations. I think it has to be that way. These are laws and enforceable as laws, but if we were to bring these laws to parliament in order to enact them we could never do the job of a modern government.

There is within our committee a sense that if a regulation is not really necessary we will send it back; do not regulate unless you have to. I have seen very few instances--and I really cannot remember one--where I was of the view that this ought not to be the subject of regulation, this ought to be the subject of a new statute. Those do not come up very often.

Sometimes the issue of authority to make the regulation comes up, and that is another watchdog capacity. We ought not to be regulating where there is not clear statutory authority to make the regulation. As you know from your legal experience, sometimes the issue of whether or not the authority is really there is not absolutely clear. In those instances cabinet has to make a determination, "We will make the regulation," and sometimes has to acknowledge that it may well be that its authority to make those regulations will be challenged by a party in a court. We cannot tell with certainty, obviously, that the authority is there, because that is an issue that the courts have to decide.

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So I do not see the issue as being way out of balance. I wish there were fewer regulations. I wish that the paper burden were not so great. I wish the regulations were not, in some instances, so complex and detailed. I wish we could have a process where language was simpler than it is in many instances. In some instances, of course, it is very simple. But the reality of regulating a modern, post-industrial society is such that they have to be complex; their authority has to be made to do them quickly. I just think of one that is now within my responsibilities, and perhaps I will submit to the committee a copy of something it may already have. It is a notice--talking about notice and comment--published in the Globe and Mail on November 22, 1984, which is a notice of proposed regulation of ethylene oxide. It is relevant to me because, as Minister of Labour, I now am responsible for the regulation of designated substances.

This notice, I think, is informative, because it is an area where we as

a ministry always put out notice and ask for comments; that is, in the area of designated substances, toxic substances. It is very difficult to regulate those substances and there are very significant interests at stake. If, for example, with a particular designated substance the acceptable level is regulated at a level that it is virtually impossible technologically to meet, we will close down businesses; if it is too high, we will endanger health.

It is important in those instances, as we craft that regulation, that the industries that use those chemicals, and the workforce that is working in an environment where those chemicals exist, have a clear opportunity to participate in the process of hammering it out, and we have created committees so that consultation can happen. Even though we have those committees, we send out notice so that anyone else who might be interested can participate in the process. And it works. The parties are not always absolutely satisfied. Sometimes industry will say, "You are far too stringent on that," and sometimes workers will say, "You are far too lenient," but at least we have heard from everyone.

I finish by saying that once all that work has gone on, the Ministry of Labour, through its minister, will present that regulation to the cabinet committee on regulations. At that point, the only real interest of the cabinet committee on regulations is, is there statutory authority to make it, did you consult widely in making that regulation and is anybody around this table, around the cabinet table, in caucus or in government really going to be upset if we pass this regulation?

Mr. Mahoney: If I could just close with a comment that one of the things I have found frustrating in my years in political or municipal life was the differences between provincial law, provincial regulations and provincial guidelines. We would often get ministerial guidelines, particularly from the Ministry of the Environment, on how certain things were done, and it was always very frustrating to determine: "Are they just saying that maybe we should do this? Should this be a regulation?"

One thing that should be clear and should perhaps be recommended by this committee is that the term "guidelines" is a very nebulous term in relation to government policy. I would frankly rather see clear-cut regulations or clear-cut laws and see us move away from published guidelines. There may be guidelines and meetings between ministerial staff and particular interest groups. You may discuss guidelines, but when you actually publish them, Food Land Guidelines and things of that nature create a lot of confusion in the community as to whether or not the government really wants us to do this. I would hope we would start going in that direction.

Hon. Mr. Sorbara: It is an interesting topic. If I might, may I beg leave of the committee to leave the committee, inasmuch as I have a pressing engagement that started five minutes ago.

Mr. Chairman: I do not think we are going to issue a subpoena to bring you back, unlike perhaps the problem with Mr. Clark. I wanted to thank you very much. We would like to hold on to Mr. Tucker and Ms. Wilson, if we might. I had indicated to you that we anticipated it was not going to go past noon. I am very much obliged. On behalf of the members of the committee, thank you. I found it very helpful.

Hon. Mr. Sorbara: My pleasure---a pleasure to be here with you.

Mr. Pollock: Mr. Chairman, along the same lines as Mr. Mahoney--



Mr. Chairman: OK. After Mr. Pollock, then Mr. Miller, just so you know that he is on the list.

Mr. Pollock: I am sorry. By the way, the minister mentioned changing a lot of rules and regulations in regard to crop insurance. Of course, if they changed any of those rules and it affected, for instance, the fruit and vegetable growers, would they always ask the Ontario Fruit and Vegetable Growers' Association for notice and comment? Would you know?

Mr. Tucker: I do not have direct knowledge of that. I would suspect that they would ask in advance and they would be talking to people. My experience generally has been that program managers in government speak with their counterparts in the private sector before they bring in new regulations.

Mr. Pollock: I would imagine they would, but I just wanted to clarify it. Thanks.

Mr. Miller: I think, to answer Jim's question, that there is always input before any changes in regulations, particularly within the Ministry of Agriculture and Food. I have been kind of close to that ministry for some time.

New legislation can be passed, and before it is effective it has to have regulations attached to it. Do you have any idea how many pieces maybe are sitting in that respect? I can think of one, the mutual insurance people requested a change in legislation which I believe was brought into effect in 1986. I do not know if those regulations have been put in place yet.

Mr. Tucker: Again, I would not have direct knowledge of whether a draft piece of legislation is waiting to come forward because regulations are not ready. That is in the policy development area of the individual ministry and not within my knowledge.

Mr. Chairman: I believe that Mr. Dekany has a few questions.

Mr. Dekany: Ms. Wilson, I would like to ask you a question about the information sheet for regulations that you described earlier. Do you or does anyone in your office scrutinize or doublecheck the assertions contained in that sheet? For example, there is a question, "Is it consistent with government policy?" There is an answer provided. Does anyone in your office or do you check that that answer is correct?

Ms. Wilson: No. I guess the short answer to that is no. These are submitted by the ministry, ministry personnel who are then going to supplement this information at the committee. It comes with a signed recommendation from the minister. No, I do not check on the accuracy of the information sheet. We have encouraged and do regularly encourage ministry staff who fill out these information sheets to do so in as complete a way and in as helpful a way as they can. It is the first introduction committee members have to the actual draft regulation.

Mr. Dekany: So your office does not do it and, as far as you are aware, there is no one who doublechecks it.

Ms. Wilson: If it is obviously incomplete--for example, if the new regulation amends two sections in an earlier recommendation, we ask the ministry officials to send along a copy of those two sections of the regulation and then to duplicate the new sections and to put appropriate underlining and explanations that would make it clear to the committee the exact nature of the changes being made.

Certainly there is liaison back and forth to ensure that it is complete and helpful and obviously any further inadequacies will be raised at the committee.

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Mr. Dekany: So there is an oral discussion and if, for example, we had an answer that the regulation was not consistent with government policy, that would probably be the topic of discussion at the cabinet meeting?

Ms. Wilson: I rather imagine. Or if something has not been filled out. I mean the ministry officials and there are others, usually legal counsel, there is program and/or policy staff there, and legislative counsel from the registrar's office; after they make a presentation, it is open for questions.

Mr. Dekany: Another question. Initially I was going to ask it of Mr. Sorbara but now that you two are the only ones at the committee, I would like to pose it to both of you. The committee heard evidence proposing the creation of a registry within each ministry to ensure that people registered on it would receive notice of regulations, assuming that there is a notice and comment procedure. We have also heard evidence that, in fact, there are mailing lists in various ministries already.

It was urged that there be a formal registry created, because few people read the Ontario Gazette and a registry would lead to more effective notice. Do you think that a registry could be easily implemented?

Mr. Tucker: That is asking in advance if I would know the subject of next year's legislation. What will be the social problems next year? Who should I put on the registry this year?

Mr. Chairman: Sorry, I do not understand your answer.

Mr. Tucker: I am not sure that I understand how you can create the registry this year for next year's problems.

Mr. Chairman: There was evidence before the committee that suggested that in the context of the environment, for instance, Energy Probe, which had a representative before us, would simply have a person registered there and anything that came out under that ministry would be sent to Energy Probe. There are some groups that are standard interest groups.

Mr. Tucker: I guess that begs the question of whether you have to have a formal registry for known interest groups that would probably receive the material anyway from the ministry. I guess what they are asking for is the right to receive it, rather than simply to be on a list that gets material in the normal course.

Mr. Chairman: Yes. I do not want to seem argumentative, but I do not know if you answered the question. Are you saying you can do it, or are you saying you do not know if it can be done, or are you saying it does not matter?

Mr. Tucker: I am not saying it does not matter. I am saying that, if you know who it is you want to send the material to now, you can do it. I do not know how the registry that you are proposing would work. I do not know how you are proposing that it would work.

Mr. Chairman: I am not necessarily proposing that anybody would do



it. I am saying there is evidence before the committee that it is done in other jurisdictions. I guess that is what it boils down to. We were wondering whether there is any problem in implementing it, if the committee decided they want to recommend it.

Mr. Tucker: I suppose that, if the committee recommended it and the government decided to do it, it is possible to design something. That is about as clear as I can come to telling you. You would probably have to design a system where you create a registry. We have these things now. I think there is some provision, for instance, under the Environmental Protection Act, since you mentioned environment, for a type of--it is not public notice, but there is a registry of certain types of orders under that act. It is possible to design something. It is a matter of taking what you want in a particular type of situation. Again, it may be best to do that on a case-by-case basis and design the type of registry, or the type of list, that you want to have. Probably what you would do is say, in that particular statute, that notice is to be given to interested persons, and interested persons may have their names placed on a list by giving notice to--and name the official, the director, the deputy minister, the minister, whatever you want to do. It is probably not a very difficult thing to design if that is what is decided to have done.

Mr. Dekany: Mr. Tucker, there has been evidence before the committee previously suggesting a need for scrutiny by a legislative committee, presumably this committee, of enabling clauses of legislation. It was argued that this was needed to ensure a balance was achieved between law-making by legislation and law-making by regulation. What are your views on scrutiny of the enabling clauses which give the authority for making regulations?

Mr. Tucker: There are two types of such scrutiny. One would be a general inquiry or a review of the types of enabling clauses that are used, and the other, which may be what you are suggesting, would be that every statute or the section or sections of every new bill be referred to a standing committee to review the enabling clauses apart from the other sections of the proposed act. My question then would be: If a bill is referred to standing committee in any event for clause-by-clause discussion after second reading, is it not possible for that committee to discuss the regulation-making powers just as it discusses all the others in the bill?

Mr. Dekany: The suggestion has been made, though, that if one committee focuses on regulation-making powers, it would have a certain expertise and be able to provide a certain uniformity in legislation, that it could, in fact, report to the particular standing committee which is looking at the bill in question.

Mr. Tucker: The difficulty with that is that you cannot divorce the expertise in that field from the need to provide the specific enabling powers that are needed to carry out the policy in the rest of the bill. It is difficult to discuss the enabling powers in a vacuum.

Mr. Dekany: Because of that difficulty, it would be proposed that the committee looking at the enabling clause would have the whole bill in front of it at the time that it looks at the enabling clause.

Mr. Tucker: So you are suggesting that there be two clause-by-clause discussions of the bill.

Mr. Dekany: No. There would be the one clause-by-clause discussion by the standing committee reviewing the policy of the bill, and there would be a specific examination of the regulation-making clauses by the other committee.

Mr. Tucker: If I understand what you are saying, the committee that is going to look at the enabling clauses would be unable to do its work until the committee doing the clause-by-clause examination had completed its work, because you would not know what the rest of the bill would look like until that stage. So the bill would then go through first reading and second reading, be referred to a standing committee for clause-by-clause consideration, and then be referred to a second standing committee for consideration of the enabling clause in the regulations.

Mr. Dekany: I am not so sure it has to be done in that way. I suppose that is one way it might be done. I think the thrust of the evidence from the proponents of doing that was simply that legislation too frequently, in the view of those proponents, failed to hit a proper balance between what ought to be part of legislation and what ought to be part of regulation.

As well, there was some criticism about the scope of regulations which were employed, the suggestion being, on the part of some of these witnesses, that the regulatory process would be better if it was a narrow one and it had been done with only the exercise of the minimum amount of authority necessary to do whatever policy function ought to be carried out.

I guess it is not going to be helpful to go into too many examples, but it is the sense that you could use a general clause in a piece of legislation that was intended for one purpose which, in fact, would be then used for other purposes not intended at the time of passing the legislation. The reason it gets used subsequently is because it is convenient for a ministry to do it that way, when the whole theory of government is that substantive changes in approach ought to come through the legislation and the legislative process, through proper scrutiny.

Mr. Tucker: I think I would be concerned not about increasing the complexity, the problems in passing a new bill, by creating another step in the process. If it is necessary to give particular attention to enabling clauses, the committee looking at it and the parties who are sitting at the committee--because there is substitution on committees--could ensure that people with expertise, perhaps members of the standing committee on regulations and private bills, at times can appear on other committees which are looking at bills, rather than have all bills funnelled through one particular committee, might very well create a logjam.

I am looking at it really from a practical point of view: How would you handle such a system? It would seem to me that probably the simplest way of doing it would be to ensure that you have people, members of the committee, who have the necessary expertise at the right time to look at the enabling clause, rather than try to funnel everything back through another committee.

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Mr. Chairman: Do I take it you have no objection to the principle, you just want to make sure that if it were implemented, it could work effectively?

Mr. Tucker: I think all clauses in the bill are open for scrutiny by the members of the assembly. There is no way that anyone can object to that. It is just a question of how you go about it.

Mr. Dekany: We have heard evidence about policy directives. By policy directives I am referring to government circulars, guides, manuals, instructions, rules and codes of conduct.



We have been presented with a brief by Professor Janisch. What he has said on page 10 of his submission is: "What is offensive about administrative guidelines and manuals is not their existence but their secrecy. Carefully thought out guidance as to what meaning is to be given to an open-ended statutory term made openly, and thus subject to judicial review, is much to be preferred over ad hoc interpretations by individual officials."

We heard evidence yesterday from the Canadian Bar Association--Ontario that government directives and policy manuals should be brought into the open.

There is a paper prepared by an eminent professor of administrative law from Quebec, Professor René Dussault, which he delivered on April 12, 1983, at the Second Commonwealth Conference on Delegated Legislation, in which he gives a warning in that he states: "However, if we are not careful, and precisely because of its vague nature, there is a risk that the directive, like that other recent government practice, regulation by contract...will cause parliamentary control over delegated legislation to lose the ground at one level that it has won at others in recent years."

One of the proposals before this committee would be to at least publish government directives. I would like to know what your views are on that subject, as well as the scrutiny of government directives. In particular, there is a practical question, would it be appropriate to publish them in a document such as the Ontario Gazette? If that were done, would it be appropriate to divide the Ontario Gazette into three parts, as is presently the case at the federal level, and in one of those parts publish government directives, as well as also use that part of the Gazette for advance publication of notice and comment in those cases where it is appropriate?

Along with that, the notion of amending the Regulations Act to define regulation to include government directives by deleting the words "of a legislative nature" and replacing them with the words "or any other document made in the exercise of a legislative power" has also been proposed. I would like to know what your views are on that.

Mr. Chairman: Some question, eh?

Mr. Tucker: It is a question with many parts. Just at the beginning, while I think of it, I do not think there is any magic in dividing the Ontario Gazette into parts. I think it is probably nothing more than a convenience for the publishers, who can only bind so many pages in one part.

I suppose one of the fundamental questions you will have to decide is whether you want to deal with law or you want to deal with other things. Once you take out "of a legislative nature," you are saying you are no longer concerned whether it is law you are dealing with and you simply want to deal with every direction that government produces, whether for itself or for someone else.

Mr. Dekany: The suggestion is to replace that by the words "made in the exercise of a legislative power." The concept of legislative power is still there.

Mr. Tucker: To start with, we do not yet know what that means. What we do know is that the idea of the regulation system is that you are dealing with subordinate legislation. You are dealing with law.

The question then becomes one simply of, restricted to what is truly

law. If you have other problems with other material, other documents that are produced by government officials, the regulation system is not necessarily the appropriate system to deal with it.

It may be necessary to create some other system to deal with that, if that needs to be dealt with. It may be that freedom of information gives you all the access to those that you need. It is certainly another area completely. To produce all of them as regulations would be to expand the regulation system quite a lot and it is certainly not a question I would want to give a definitive answer to right here and now. I would say that is a subject that would require a lot of study.

Mr. Chairman: If I might just interrupt at this point.

Mr. Tucker: Sure.

Mr. Chairman: I understand you may have other obligations elsewhere.

Ms. Wilson: Yes, if you do not mind, Mr. Chairman--unless you have another question--particularly.

Mr. Chairman: Are there any red-hot questions to fire? I think you are off the hook. I would like to thank you very much for taking the time to come to enlighten the committee. Certainly, I have found your comments helpful and, from the comments made by other members of the committee, they did as well.

Ms. Wilson: Thank you very much, Mr. Chairman.

Mr. Dekany: Mr. Tucker, clause 6(a) of the Regulations Act gives the Attorney General the power to determine whether a regulation, rule, order or bylaw is a regulation within the meaning of the act. His decision is final, according to that section. In your view, would there be any problem in having that section deleted from the act?

Mr. Tucker: As far as I know, that section has never been used. What the future might hold I could not tell you. But, as far as I know, it has never been used.

Mr. Dekany: Referring to section 22 of the Interpretation Act, that is a section which gives the power to the Lieutenant Governor in Council to make regulations for the due enforcement and carrying into effect of any act of the Legislature and where there is no provision in the act, to prescribe forms and fees. In your view, could that section either be deleted or transferred to the Regulations Act?

Mr. Tucker: I think it could certainly be transferred to the Regulations Act. There is no particular reason why it stands in the Interpretation Act, as far as I know.

Mr. Dekany: What are your views on actually doing away with that, considering that, in most cases, the specific act in question will have an enabling clause which gives the Lieutenant Governor in Council powers to make regulations or prescribe fees or forms?

Mr. Tucker: I think you have given the answer in the question, "in most cases." That sounds very much like a safety section for the cases where it has not been put in and is found to be needed. So, doing away with it removes the safety net.



Mr. Chairman: Is that not somewhat contradictory to all the other discussion we had about the function of the legislature? If a piece of legislation does not have that provision which, in my experience, is extremely rare nowadays, then do you think the only conclusion one would draw that the legislation, or rather the Legislature, did not intend that power should exist for that particular legislation. When you say, "because they need it," you really mean the government decided all of a sudden that we want to do something that we do not have the power to do?

Mr. Tucker: It may very well be, if you are looking at something like fees, for instance, that it simply was not thought of. There was no debate that said, "We don't want fees." There was simply no thought of charging fees at the beginning, for whatever it is that may be discussed, and it may even be that the people who were preparing it, the policy, knew that section was there and simply relied on that.

I do not know. I cannot tell you which case it was, but it does not necessarily mean that the Legislature decided that this statute shall not provide fees, shall not provide for charging fees. It may have been an oversight, or it may have been deliberate that they would rely on the power in the Interpretation Act. You are asking me to speculate and I can only give you theoretical answers.

Mr. Chairman: I appreciate your response. I do not know how accurate this is, but my understanding is that no ministry would rely on that clause.

Mr. Tucker: I think there have been some regulations made under that clause.

1230

Mr. Chairman: Recently?

Mr. Tucker: Not in the immediate past, but there have been some, I think, and they are listed too.

Mr. Chairman: OK. Thank you.

Mr. Dekany: We have heard many people submit that statutory authority for a regulation should be identified more precisely in the regulation. This is the current practice at the federal level. Do you see any problem in making such a requirement mandatory?

Mr. Tucker: I do not know how easy it will always be to identify it. It is something that we would know better after we had done it. If we were required to do it, we would do our best to comply with it. It does create an additional problem in the drafting of a regulation in the sense that there is an increase in workload, which is not always something for the legislators to concern themselves with. If this is what is wanted, this is what will be done. Whether it will create problems remains to be seen. How accurately it could be described in future, I do not know.

Mr. Dekany: Surely it cannot be that great a problem, because in your paper which you distributed, at page 6 you deal with problems of authority and vires. This is the paper you prepared for ministry counsel.

Mr. Tucker: Yes.

Mr. Dekany: You say: "You should identify in your instructions what

you see as the authority for your instructions. I admit, this is a counsel of perfection, but it will solve some problems very quickly. There are two benefits from such an approach: First, it ensures that you satisfy yourself that there is authority for the regulation before you instruct us to begin drafting. Second, it helps us--there are times when it is not at all clear to us what you see as authority for the making of a particular regulation."

Mr. Tucker: Yes, that is correct.

Mr. Dekany: That process addresses that question right at the beginning.

Mr. Tucker: Yes, that is correct, but when you get into some complex regulations, you may find that you have to put together a combination. For instance, I do not know whether you are going to be satisfied or whether future committees would be satisfied with simply quoting the enabling section as the authority.

Mr. Dekany: In Ottawa, there are specific guidelines, and the practice in Ottawa is that if there are subsections, they are required to quote the subsection. If it is pursuant to the power to prescribe anything that is to be prescribed under the act, then they cite the appropriate section of the act. It is quite detailed at the Ottawa level, in any event.

Mr. Tucker: Yes. I do not know what problems they are running into in practice in doing it. I can only say that I would approach it with some caution. Certainly, when people come to me to ask me to draft a regulation, I appreciate their saying to me, "We think it is this section." They do not always do it. In fact, in most cases, they do not do it. We know what sections are required.

The reason I put that into that paper is that I do want ministry counsel to look at it before they come to me. Before they come to the registrar of regulations, I want them to look at it and decide for themselves whether there is authority when they are giving advice directly to the person proposing the policy change.

Whether or not it becomes a problem in quoting that information, I am not saying there will be a problem. Really, I guess the best I can say to you is that I have never worked under that system. I cannot be sure. I do not know.

Of course, what we always worry about is, what will be the final effect when the matter comes before a court? That is why sometimes you will hear people expressing a concern that insufficient authority will be quoted or the wrong authority will be quoted. All they are concerned about is the tendency today of the courts to look at other things, rather than just straight at the legislation. They will look at other information in order for the court to reach its decision. That is the concern of some people. How well it will work in future, I do not know. If we are required to do it, we will certainly do it.

Mr. Dekany: That concern could be met by putting into the Regulations Act a provision that says failure to cite the authority or misciting of the authority would not invalidate the regulation.

Mr. Tucker: It would help alleviate that concern, yes.

Mr. Chairman: Just to put in Hansard information pertaining to an earlier question, Mr. Kaye has provided me with some information about the use



of section 23 of the Interpretation Act. There are currently a few instances where the act was relied on and is relied on for fees under the Ambulance Act, the Business Corporations Act, the Hospital Labour Disputes Arbitrations Act, the Labour Relations Act and the Liquor Control Act. Why it was done under the Interpretation Act in each of those instances is not altogether clear, but evidently that is what we have done. Equally unclear, to me at least, is why it is left there and not cleaned up, but that is what they have done.

Mr. Tucker: The reason for listing it under the Interpretation Act is that it is the policy, if you like, of the registrar of regulations to list all regulations under their enabling statutes. So rather than list it under the Ambulance Act, it is listed under the Interpretation Act.

Mr. Chairman: I understand that and I think that makes good sense, but there is the suggestion here that since the regulation was passed there has been an amendment to the Business Corporations Act. They did not bother to correct what would otherwise be perceived as a deficiency of the Business Corporations Act, to obviate the necessity of using section 22 of the Interpretation Act. Why that occurs, I do not know. Maybe there is a good reason for it. It is not apparent to me at this moment. But I thought it was interesting. You said that there were instances where it was used and indeed that is quite correct.

Mr. Dekany: One of our questions I would like to ask you about is question 18, which is whether the powers and duties of the registrar of regulations should all be contained in the act. Now they are partly in the regulations and partly in the act. Do you see any problem in putting them all into the act?

Mr. Tucker: I have some question about putting into a statute what is primarily a matter of administration. Dealing with the work of the registrar in filing and publication is the primary function of the Regulations Act. The Regulations Act is an act which makes regulation public law rather than, as before that act, unpublished law. In addition to that, the registrar performs another function as the central drafting office for all government regulations, but that is an administrative function. That can equally well be done simply by a direction from the Office of the Premier, from the Cabinet Office. That is all that is required to make something like that work. You do not need any law to say that government ministries must come to the registrar to prepare their draft regulations.

If you are looking also at the power of the registrar, in publishing something, to make minor corrections, that could be set out in the statute. It is a useful thing in correcting typographical errors or minor errors of style or an incorrect internal reference to something that has to be changed. There is no reason why that could not be added to the statute instead of in the regulations. I suspect that was something that was added in the distant past in the regulation, because that is the convenient place to put it.

Mr. Chairman: Mr. Dekany, your final question on the matter.

Mr. Dekany: My final question is about the topic of disallowance at the Ottawa, federal level. The equivalent of our scrutiny committee has the power to recommend to the House that a particular regulation be repealed. In fact, if such a motion is tabled and is not acted on within 15 days, the minister or the cabinet making the regulation is directed to repeal it. Do you see such a system having any difficulties in working in or applying to Ontario?

Mrs. Marland: Excuse me. Before Mr. Tucker responds, normally I

think committees are finished by this time. When I agreed to sub on this committee today, I already had a one o'clock meeting scheduled. Right now there is not a quorum of the committee present. I am just wondering how much longer you are hoping to hang in without a quorum and proceed with the questioning.

Mr. Chairman: I think I have indicated to you that this, as far as I am aware at least, is the last question, subject to questions from members of the committee. But I should add that there had been some discussion in the committee about the fact that this session would probably run a little bit later than normal. We are not sitting in the afternoon and originally we had been scheduled to do that. We are trying to get all the technical things covered so that we have as complete a record--in the case of some members of the committee who sat last week and are not available this week, it will enable them to read the material.

I might add that there is also a paper on regulatory reform and options for change that the committee is going to be discussing later so that we have some evidence that addresses the myriad of issues before the committee there.

I appreciate that we are running later than normal, but I think we are close to the end, as far as I know. I appreciate that you may have other pressing things to go to. There is nothing wrong: If you have to go, you have to go. I think we all understand that problem.

Mr. Tucker: Disallowance: I approach that subject with some caution. Like notice and comment, the idea has been around for a long time and has been tried in one form or another in various jurisdictions. I would like to see the Ottawa experience have a little more experience before expressing any definite views on the topic.

I have some reluctance with the idea of forcing the government's hand, which is what the proposal is, as you have stated it. If the government does not move on the matter within 15 days, then the regulation is disallowed, which may very well put a government, any government, in an embarrassing position, depending on what the problem is at the particular time. The matter is taken out of the control of the government House leader, who handles the order of business. It may move the whole matter of the validity of regulations back into the political arena and you may have considerations of politics rather than law being discussed. For that reason, I have some hesitation about recommending it. I would like to see more experience with that in the other jurisdiction before it is recommended here.

Mr. Chairman: There apparently not being any questions from any other members, Mr. Tucker, thank you very much. You have been very patient and covered a wide range of issues. I thought it was very helpful to the committee, and certainly I found your views very helpful.

Mr. Tucker: Thank you, Mr. Chairman. I enjoyed talking to the committee.

Mr. Chairman: I understand we are going to be meeting next Wednesday morning in committee room 1. There will be an updated version of the options for change for consideration by the committee, but at least this version, which obviously does not have today's information, and I guess, most of yesterday's, in it is available for all the members. I understand it will be distributed to all the offices of members who are not here but who have been on the committee on other days. We will then, as a committee, be considering,



I suppose in camera, all of the options for change starting on Wednesday morning.

Clerk of the Committee: First of all to do the budget.

Mr. Chairman: Start to do a budget in public and then proceed substantially in camera at 10 o'clock on Wednesday.

Thank you very much and also thank you, all the members, for being so patient.

The committee adjourned at 12:42 p.m.

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T-15

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

REGULATORY PROCESS

WEDNESDAY, APRIL 6, 1988



STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

CHAIRMAN: Fleet, David (High Park-Swansea L)

VICE-CHAIRMAN: Beer, Charles (York North L)

Cleary, John C. (Cornwall L)

Fawcett, Joan M. (Northumberland L)

McCague, George R. (Simcoe West PC)

Pollock, Jim (Hastings-Peterborough PC)

Pouliot, Gilles (Lake Nipigon NDP)

Ruprecht, Tony (Parkdale L)

Smith, David W. (Lambton L)

Sola, John (Mississauga East L)

Swart, Mel (Welland-Thorold NDP)

Substitutions:

Callahan, Robert V. (Brampton South L) for Mrs. Fawcett

Lupusella, Tony (Dovercourt L) for Mr. Beer

Philip, Ed (Etobicoke-Rexdale NDP) for Mr. Swart

Clerk: Manikel, Tannis

Staff:

Kaye, Philip J., Research Officer, Legislative Research Service

Dekany, Andrew C., Legal Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Wednesday, April 6, 1988

The committee met at 10:18 a.m. in committee room 1.

REGULATORY PROCESS  
(continued)

Mr. Chairman: I see a quorum. I would like to get under way. There are really only two matters to be dealt with. The first is a tentative agenda that is set out. Obviously, it is subject to change, but it is there for people to be aware and it gives some sense of the lineup that we already have for private bills. I have not yet heard back about the second meeting each week to deal with the regulations. As soon as I learn of anything, I will certainly advise you.

The more substantive issue is the budget. There is a bit of an explanation about activities that took place in 1987-88 and the proposed activities for 1988-89. I do not think there is anything terribly surprising in what is there. The budget is lower because there are no hearings anticipated at this point. If, as a result of our first report dealing with regulations, we think we need to have more hearings, a trip to Australia or whatever, I would propose that we go back on the basis of a supplementary budget. As we discuss regulations, members may have a greater and greater desire to go to Australia to be really sure, but we will see.

I am amenable to having simply a motion, or certainly we can discuss the budget if someone has a question.

Mr. Callahan: Do not move the Australian trip, because I am not a permanent member and I would have to vote against it. I think Mr. Philip would have to as well. Are you a permanent member of this committee?

Mr. Philip: No.

Mr. Chairman: We can make you permanent members, if that will help.

Mr. Philip: You would probably save money on me, as I am going to Australia with another committee, so as long as you book it for the week after then--

Mr. Chairman: We could combine it. It sounds like an efficient way to proceed.

Mrs. Stoner: What committee is that?

Mr. Philip: I am not going to say. It would get Callahan to join the same committee I am on.

Mr. Chairman: Mr. Callahan moves that the budget in the amount of \$52,700 be approved and that the chairman be authorized to present the budget to the Board of Internal Economy.

All those in favour? All those opposed?



Motion agreed to.

Mr. Chairman: Subject to any questions, I think that ends the formal part. We will then proceed in camera with the regulations report.

The committee continued in camera at 10:25 a.m.

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STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

COMMUNITY YOUTH PROGRAMS INCORPORATED ACT  
CITY OF MISSISSAUGA ACT  
OSHAWA PUBLIC UTILITIES COMMISSION ACT  
WINDSOR PUBLIC UTILITIES COMMISSION ACT  
ORGANIZATION

WEDNESDAY, APRIL 13, 1988



STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

CHAIRMAN: Fleet, David (High Park-Swansea L)

VICE-CHAIRMAN: Beer, Charles (York North L)

Cleary, John C. (Cornwall L)

Fawcett, Joan M. (Northumberland L)

McCague, George R. (Simcoe West PC)

Pollock, Jim (Hastings-Peterborough PC)

Pouliot, Gilles (Lake Nipigon NDP)

Ruprecht, Tony (Parkdale L)

Smith, David W. (Lambton L)

Sola, John (Mississauga East L)

Swart, Mel (Welland-Thorold NDP)

Substitutions:

Breaugh, Michael J. (Oshawa NDP) for Mr. Pouliot

Callahan, Robert V. (Brampton South L) for Mrs. Fawcett

Also taking part:

Offer, Steven (Mississauga North L)

Clerk: Manikel, Tannis

Staff:

Mifsud, Lucinda, Legislative Counsel

Witnesses:

From the City of Mississauga:

Anderson, Jim, City Solicitor

From the Ministry of Municipal Affairs:

Neumann, David E., Parliamentary Assistant to the Minister of Municipal Affairs (Brantford L)

Nielson, Margot, Economist, Municipal Finance Branch

Gray, Linda, Adviser, Legislation, Policy, Powers and Legislation Section

From the Oshawa Public Utilities Commission:

Alexander, Robert A., Legal Counsel; with Creighton, Victor, Alexander, Hayward and Morison

From the Windsor Public Utilities Commission:

Prince, Walter H., Legal Counsel; with McPherson, Prince and Geddes

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Wednesday, April 13, 1988

The committee met at 10:05 a.m. in committee room 1.

COMMUNITY YOUTH PROGRAMS INCORPORATED ACT  
(continued)

Consideration of Bill Pr70, An Act to revive Community Youth Programs Incorporated.

Mr. Chairman: I see a quorum. Perhaps we can get under way. The first item on the agenda is Bill Pr70. This is a matter that has been previously considered. The sponsor is Mr. Carrothers. It is An Act to revive Community Youth Programs Incorporated. I believe the only matter we have is a pro forma motion that simply had been inadvertently overlooked in terms of being requested the last time around.

Mr. Sola moves that the committee recommend that the fees, less the actual cost of printing, be remitted on Bill Pr70, An Act to revive Community Youth Programs Incorporated.

Motion agreed to.

CITY OF MISSISSAUGA ACT

Consideration of Bill Pr22, An Act respecting the City of Mississauga.

Mr. Chairman: The next item on the agenda is Bill Pr22, An Act respecting the City of Mississauga. Mr. Offer is the sponsor. He is here, and I believe he is with Jim Anderson, who is the solicitor for the city.

Mr. Offer: It is a pleasure to be once more at this committee, where I spent many hours in the last session in the position of Mr. Neumann.

I would like to introduce Jim Anderson, who is the solicitor for the city of Mississauga. The bill before you, Mr. Chairman and members of the committee, is one which has been largely modelled after the Municipality of Metropolitan Toronto Amendment Act of 1986. I understand that there are no objections from the ministry with respect to its content. This bill authorizes the council of the corporation of the city of Mississauga to establish supplementary pensions for council members and their surviving spouses and children.

I also understand that there is one amendment, a friendly amendment that has been agreed to by all parties concerned, which I understand will be moved by Mr. Sola. I do not have anything else to say.

Mr. Chairman: Mr. Anderson, do you have any comment or submission?

Mr. Anderson: I think Mr. Offer summed it up completely.

Mr. Chairman: That being the case, I am open to any questions or comments from members of the committee, or Mr. Neumann, if you want to comment first.



Mr. Neumann: First of all, I want to say that I had the distinct pleasure earlier this week, on Monday, of being in Mississauga and addressing Mississauga city council on the whole issue of Local Government Week. From the reception I received from the mayor it is clear that her worship still has that spunk. She indicated that municipalities should have authority to do a lot of things but did not like authority to do some things. There is certainly a healthy dialogue, as usual, between Mississauga and the Ministry of Municipal Affairs.

However, in this case, I am pleased to indicate that the Ministry of Municipal Affairs supports Mississauga's bill. We do not see any reason to object. It follows along the lines of the program in Metro Toronto, and we see no reason to object to a local option being exercised here.

Mr. Sola: I would like to have some of the questions that were in some of the letters received answered and put on the record. J. P. Woods had three questions. I do not see the answers to them. I wonder if we could put them on the record: "How much are the present pensions for council members?"

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Mr. Anderson: Obviously, they vary, but I can indicate that they are payable at the age of 65, or the 90 factor is used. The pension arrangements in place are based on the Ontario municipal employees retirement system, and concillors are required to contribute 5.5 per cent of earnings, just as usual, under OMERS.

Mr. Sola: OK. The second question he asks is: "How much are they asking for the 'supplement'?"

Mr. Anderson: Under the present OMERS, the pension is based upon two per cent of the pensionable earnings and the formula with respect to credited service. What the supplementary pension does is add 1.5 per cent pensionable earnings so that the total pension benefit is 3.5 per cent of pensionable earnings. The result, I understand from the finance department, is that the maximum reached under OMERS, which is 70 per cent of pensionable earnings, would be reached in 20 years rather than 35 years as for a normal employee.

Mr. Sola: OK, and the third question he asks is: "Would a two-year stint in council earn them a pension and the supplement in question?" Is there any cutoff as far as length of service is concerned?

Mr. Anderson: I am not aware of any cutoff. As I did mention, what I am aware of is the fact that, in terms of years of service, there is a cutoff in the sense that there is the formula with respect to retirement age of 65 and the 90 factor being used. So obviously with 35 years of service, one can retire at the age of 55.

Mr. Sola: Right. How about from the bottom end, though?

Mr. Anderson: I am not aware of any cutoff on the bottom end.

Mr. Smith: I believe in our own case here, as provincial members, we could withdraw the pensionable premiums that we pay up to, I believe, six years. So in this question here--"Would a two-year stint in council earn them a pension?"--could they withdraw it if they were only on there for a two-year period or do they have to leave it in for whenever they reach 65 years of age or the 90 factor? Do you know if there are any conditions on a two-year stint in council?

Mr. Anderson: Now I am starting to wish that finance could show up here from the city of Mississauga. My understanding is that the regular conditions in terms of OMERS would apply. My understanding is that there is a vesting after 10 years with OMERS. I could be wrong on that but I believe there is a length of period of 10 years for vesting, and that would apply to the council members. There are no different terms or conditions applying to councillors than to employees under OMERS.

Mr. Smith: When you say "vesting after 10 years," that means they have to leave it in after 10 years but may withdraw it before?

Mr. Anderson: That is correct.

Mr. McCague: Has there been any thought given to changing the provincial legislation to allow this to happen without the municipalities having to come forward one by one?

Mr. Neumann: I believe this matter is not being considered at the present time. As you know, the Ministry of Municipal Affairs has quite a heavy agenda of legislation this session. There does not seem to be a demand for this across Ontario. It is not something the minister is receiving a lot of correspondence on, to amend the pension situation for municipal councils.

Mr. McCague: You say there is not a lot of demand for it. It would not be hard to whip up, would it?

Mr. Neumann: I am not so sure about that. The vast majority of the 839 municipalities are smaller municipalities, and I do not believe there is an interest in many of the municipalities in this kind of pension scheme. Not many of them have taken advantage of the existing local option. They can have a pension of sorts. Do you know how many municipalities have taken advantage of it?

Ms. Nielson: There are only about 500 councillors right now who are in OMERS. It is mainly the urban municipalities that have opted for OMERS.

Mr. Smith: I did not catch that. Was that 500?

Mr. Neumann: About 500 councillors are covered under the local option provision.

Ms. Nielson: I think it is 500.

Mr. McCague: It does seem, even with 500 councillors, that a government bill, either altered or a new one to cover this situation, might make some sense--I just mention that to the parliamentary assistant--so that we do not have too many of these bills coming forward. There is the temptation as one municipality sees what another is doing to attempt the same thing in due course.

Mr. Neumann: As Mississauga has done, probably observing Metro and how the plan has worked there.

By the way, we recommend that Mississauga look at the arrangement that Metro has with OMERS because we feel that has worked well. In implementing yours, we recommend that model to follow.

Mr. Chairman: There being no further questions, might I suggest that we consider carrying sections 1 through 4, inclusive?



Sections 1 to 4, inclusive, agreed to.

Section 5:

Mr. Chairman: With respect to section 5, I believe that all members of the committee have an amendment in writing.

Mr. Sola moves that section 5 of the bill be struck out and the following substituted therefor:

"5. A pension may be provided under this act to a person who was a member of council on January 1, 1987, even though the person is not a member of council on the day the bylaw establishing the pension plan is passed and the pension may be paid retroactive to that date."

Mr. Smith: Why is the day, January 1, 1987, picked? Is there some significance to that date? It does not really follow on an election date. I just ask why that day was picked.

Mr. Anderson: The ministry did come back to us and indicated that November 30, 1985, may not be appropriate and January 1, 1987, was chosen, to my knowledge, as the date approximately when council instructed staff to seek the legislation. As far as its effect is concerned, I am told there would be no different effect in terms of eligibility whether you use November 30, 1985, or January 1, 1987, but clearly it affects those councillors who instructed us to seek legislation.

Mr. McCague: Can I get some clarification of this? I would think when 1987 was used it was probably to accommodate somebody who for some reason or another had to resign part-way through a term. If that is not the case, why do you then go back that far? Why would you not use 1988, for instance?

Mrs. Gray: I think the intention of the amendment is to cover the council members who were on council at the time the bylaw was passed to initiate the action for the private bill. The reason the ministry asked for the change was that the old date that is in here was the date that was passed for Metro and it was meant to cover the dates that people were on Metro council at the time they passed the bylaw to obtain the Metro legislation, which we felt was inappropriate for Mississauga. Mississauga's date is to cover the people who were there at the time this bill was coming forward from the council.

Mr. McCague: Is that appropriate or inappropriate? When was the first indication that your ministry had from Mississauga of its intent to submit this bill? I notice, for instance, that you have a report here dated January 19, 1987.

Mrs. Gray: We received our draft from legislative counsel on March 19, 1987. I do not have the council resolution with me at the time, but presumably, council would have had to pass a bylaw resolution prior to that time to authorize applying for this bill. I would assume that the January 1 date is roughly the time that the bylaw was passed.

Our indication to Mississauga was that it should have a firm date that it would be prepared to defend in court, so that if previous council members were coming forward to apply to be part of this program, Mississauga could defend its date on the basis of the members of council who were there who passed the resolution applying for this bill, and this was the date that Mississauga sent us.

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Mr. McCague: It might be dangerous to make this retroactive to a date which is earlier than when it was considered by council. That was on February 9, 1987.

Mr. Chairman: Is there any comment from Mr. Anderson again?

Mr. Anderson: I believe January 1 was chosen with the concurrence of the various departments within the city. I believe that the resolution to seek this legislation was in fact passed early in February. Perhaps February 9 is the correct date, but January 1 is a convenient date. It affects the same members of council in terms of eligibility. That is really all that that section is designed to do, to provide for eligibility of those who would be entitled to the enhanced benefit, the supplementary pension.

Mr. Chairman: It is the same people?

Mr. Anderson: The same people, the same effect. It is a convenient date.

Mr. Chairman: I do not know if that satisfies Mr. McCague, but it is a little bit more information.

Mr. McCague: I would have thought we would have had a comment from the ministry, because it seems to me that it is rather a dangerous precedent to be further backdating the effective date from the date that the request came to us. Now, I do have the extract and it is from the council meeting of February 9, 1987, where they did, in fact, instruct the solicitor to make application to the province of Ontario for private legislation. While they did say in that motion--no, they do not say in the motion that they were requesting it as of 1987. I would have thought it should have been 1988 if you are going to go for a January date.

Mr. Neumann: As I understand it, the ministry's concern was with respect to the original date, that it backdated it considerably before the intent was indicated at the council for the supplementary pension. We recommended that the date coincide with the time that the matter was raised on the council. Mississauga then chose January 1, 1987, and we do not have any concerns with that date. It is a date they selected, and if they feel it is defensible and it covers the same people, then we really do not have a concern.

Mr. McCague: I will just point out one more thing. I do not want to belabour the fact, but the notice of application for this special legislation was printed in the Mississauga News. I am not clear on up to what time people were given the opportunity to object. However, there are letters from Joseph P. Woods, April 15, one from somebody else here on--no, that is the same person--another one on June 1, one on May 6 and so on. I would have thought that it would be smart at least to have dated this bill, or the retroactive period, to coincide with the notice that was given in the paper, which, in my opinion, would be July 1, 1987, rather than January 1, 1987. There I rest my case.

Mr. Anderson: The only comment I would make is that when council instructed us to seek this legislation, they instructed that it be modelled on the Municipality of Metropolitan Toronto Amendment Act of 1986. In so far as retroactivity is concerned for eligibility, that particular act went back approximately a year for, I believe, the inaugural meeting of that particular



council. We are not seeking retroactivity to that extent. We are simply taking a convenient date at which council instructed us to proceed with this legislation. I feel it is convenient and it makes really no difference, because, whether you take the prior date, this date or in June, it will affect the same members, but that has been chosen by the city and chosen as appropriate by the various departments of the city.

Mr. Chairman: I am advised that three people who had shown a concern about this matter were advised of today's proceeding and declined the opportunity to appear. They are W. R. Eckermann, Mrs. A. Millicent Finn, Joseph P. Woods.

Mr. Sola: I would just like to make a comment here that this request, or this Bill Pr22, seems to fly in the face of the remarks that her honour the mayor made to Mr. Neumann on his visit and that she makes consistently whenever I see her in her opposition to getting the Sunday shopping question thrown back at her. I would just like to put on the record that I may be using this bill to sort of defend myself the next time she goes on the attack.

Mr. Chairman: All right. Perhaps we could deal, then, with the question of the amendment to section 5. It has been moved already by Mr. Sola.

All who are in favour? Opposed? One opposed.

Motion agreed to.

Section 5, as amended, agreed to.

Sections 6 and 7 agreed to.

Title agreed to.

Preamble agreed to.

Bill, as amended, ordered to be reported.

Mr. Chairman: Thank you very much, Mr. Offer and Mr. Anderson.

Perhaps I can then call upon the next item on our agenda. It is Pr10, An Act respecting the Oshawa Public Utilities Commission. Mr. Breaugh has the opportunity to be the sponsor on this matter, and I guess he gets to shift seats. I understand there are a number of individuals with him representing the commission. Perhaps, Mr. Breaugh, you can introduce whoever is with you. I have a list of three names. I am not sure whom I am looking at.

#### OSHAWA PUBLIC UTILITIES COMMISSION ACT

Consideration of Bill Pr10, An Act respecting the Oshawa Public Utilities Commission.

Mr. Breaugh: OK. We are here in force. Bob Alexander is the solicitor for the public utilities commission. Lloyd Algar and Lorne Marshall are staff people from the utilities commission, if you have questions.

The bill itself, which you have in front of you, is pretty straightforward. Essentially, it covers one small aspect of an extension that was made last year where the act itself was amended to provide for benefit

packages for employees. The question that is to be discussed and covered by this bill is very simply that it is not exactly clear whether you can legally extend these benefits to spouses and children of deceased employees. The commission wishes to have that particular question answered by means of a private bill. It is my understanding that you have a few others of a similar nature where municipalities or public utilities commissions want to extend these benefits to these people and are simply seeking a clarification. In essence, that is what the bill is all about.

Mr. Chairman: Thank you very much. Mr. Alexander, do you have any further comments?

Mr. Alexander: No, Mr. Chairman. I think Mr. Breaugh has explained that very well.

Mr. Chairman: Are there any questions or comments from members of the committee or from Mr. Neumann?

Mr. Neumann: We do not have any objection to Bill Pr10. We note that the city of Windsor already has similar legislation.

Mr. Breaugh: If you want me to, I will just move the sections for you.

Mr. Chairman: It might be unfair to expect you to do it all. I guess we will first of all simply deal with carrying sections 1, 2 and 3, the preamble, the title and the bill.

Sections 1 to 3, inclusive, agreed to.

Title agreed to.

Preamble agreed to.

Bill ordered to be reported.

Mr. Chairman: I think that is our fastest one on record at this point. Thank you very much.

1030

#### WINDSOR UTILITIES COMMISSION ACT

Consideration of Bill Pr62, An Act respecting The Windsor Utilities Commission.

Mr. Chairman: The next item on our list is Bill Pr62. Mr. Ray, who is before us, is the sponsor, and I presume it is Mr. Prince who is also before us.

Mr. Prince: That is correct.

Mr. M. C. Ray: This is similar to the one you just dealt with. It is a submission by the Windsor Utilities Commission for authority to provide insurance and hospital, medical, surgical, nursing or dental benefits and the payment thereof for spouses and children of deceased employees.

I might add that the city of Windsor did this a few years ago for its



employees, so this naturally flows from and follows that application for special legislation.

I have with me Walter Prince, who is solicitor for the Windsor Utilities Commission, senior partner in the Windsor law firm of McPherson, Prince and Geddes.

Mr. Prince: As Mr. Ray said, this really flows from a previous private act passed in favour of the city of Windsor, authorizing the city to provide these benefits for its employees, and it has flowed right through now to the Windsor Utilities Commission. The same form of request now is coming from their employees to be treated the same as the city of Windsor employees.

The bill is exactly the same as the one pertaining to the city of Oshawa. I really cannot add anything more than what was said by my predecessors here and by Mr. Ray.

Mr. Chairman: Thank you very much. Mr. Neumann, do you have any comments?

Mr. Neumann: My comments are the same as with the previous bill, Bill Pr10. The two bills are essentially the same.

Mr. Smith: This is just a question of interest. Maybe I could have asked this very same question of Mr. Breaugh as well. Does this happen in many instances, that the spouse dies and leaves the wife and family? Is it a common occurrence? Are there many cases down in the Windsor area that you would have to carry?

Mr. Breaugh: As a matter of fact, everybody dies.

Mr. Prince: It is discriminatory right now. If you retire and you die, your spouse and your dependants can have the benefits. If you die in the course of your employment, they cannot provide them. I do not want to acknowledge that working for the Windsor Utilities Commission is a high risk. I think some of them think it is a high risk. There are occasions when employees do die in the course in their employment.

Mr. M. C. Ray: Could I add that I think the motivation for this, of course, is through the collective bargaining process. It is interesting to note that Oshawa has had similar requests as the city of Windsor. They are leaders in the collective bargaining and labour union movement. I think it is time Ontario really thought about amending the general legislation, the Municipal Act, to provide all municipalities and all agencies and boards of the municipalities with this opportunity, so they do not have to come here seriatim asking for this sort of benefit through special legislation.

Mr. Smith: I think we have the comments we want.

Mr. Chairman: I believe there is already an eager committee member seeking to have--

Mr. Breaugh: I am anxious that Windsor get parity. I move the adoption. I do not want to discriminate.

Mr. Chairman: All in favour of the bill as it stands before us? Passed.

Sections 1 to 3, inclusive, agreed to.

Bill ordered to be reported.

Mr. Chairman: Before committee members get too eager to leave, let me inform them that our request for additional time to deal with regulations has been put off, I guess. There was a suggestion that maybe at a point in the future there would be time made available, as we had hoped, but not right away. Consequently, I am inclined to suggest that we start the scheduled time now to deal with regulations. I do not know about the rest of the committee members, but I am prepared to deal with it now, given that we went through the agenda much more quickly than might have been anticipated.

The counsel and the researcher are not here because we had not anticipated being available for regulations, but I am prepared to have discussions today, if you like, since it would be in camera and informal anyway.

Mr. Ruprecht: If Mr. Smith leaves, is there a quorum?

Mr. Chairman: There is a quorum as long as the chairman sees there is not a vote.

Mr. McCague: I understand the dilemma you have, Mr. Chairman. I talked to Mr. Philip yesterday who would want to be here as well if there were any discussion on the matter at hand. You asked me privately this morning if I would see what I could do about getting our House leader, at least, to agree to the scheduling of more time, and I will do that.

Mr. Ruprecht: George, there is not a quorum yet. Is anybody listening to you?

Mr. McCague: You are, Tony, and the chairman is and there are a couple getting coffee. I do not think we can proceed this morning, but I will undertake to see what can be done about scheduling some time.

Mr. Chairman: I am wondering if it is viable to alter our tentative agenda. There was an agenda provided, I guess last week, to deal with both private bills and regulations through to the end of May and it predominantly lists different private bills to be dealt with. I am thinking now in terms of clearing out either April 20 or April 27.

Clerk of the Committee: If I could make a comment on that, I have talked to Philip Kaye, the researcher for regulations, and the chairman has asked him to do a number of things. I am not sure he could have it ready for next week; more likely for April 27.

Mr. Chairman: Do we want to tentatively leave it that way? We will probably do regulations the morning of April 27. If we can get additional time before then or at that time, we may be able to do more regulations. The chair is expecting to be away at least the following Wednesday and perhaps two.

Mr. McCague: Good time to do it.

Mr. Chairman: The chair, being broad-minded, did not hear the last comment.

Mr. Ruprecht: How much extra time would you think you would need to finish up the extraordinary business?



Mr. Chairman: Two to four meetings, I suppose.

Mr. Ruprecht: Two to four meetings. George, is it your party's understanding that this is what you need?

Mr. McCague: We discussed a maximum of four.

Mr. Chairman: Depending on how quickly people come to agreement.

Mr. McCague: Mr. Chairman, what can you suggest we do to avoid the situation we have this morning, for instance?

Mr. Chairman: I was very surprised at the result, I must say. It is the first time it has happened. All I can suggest is that we will try to keep the mornings a little more packed than we have. Ordinarily, I leave the scheduling of these things to the clerk and she lines them up. Before, our problem has been that we have not been able to get through what we had. When he have had three or four items scheduled, we have been pressed on occasion to cover them by 12:30 p.m.

Mr. McCague: It seems to me, though, that the Ministry of Municipal Affairs could have told us this morning that we were dealing with four items to which it had no objection. When the ministry has no objection, in my experience, they usually go through.

I wonder if a careful examination of the ones we have before us would not indicate that we could have on the agenda--if it were like this morning's, we could have 15 or 20. It would not have been necessary to bring somebody all the way from Windsor or Oshawa. This is if there is no objection from the ministry. But if we do run into objection, we could just halt the process and have them in at some later date. In other words, if there is an objection from a member or from the ministry or the legal staff, fine, then we know we would have to have them in, but if there is no objection and no objection from the members, we could basically just rubber-stamp it.

1040

Mr. Chairman: I am sympathetic to what you say. It is a matter I have queried in terms of both the notion of having ministerial objections and certain types of bills. That was one of your questions earlier today, whether it is necessary to have all these things come forward. Previously, we have seen bills relating to property taxes where individual nonprofit entities came forward. The response from the ministry has been, consistently, that it is working on that kind of problem in the context of the taxation cases. I think this committee ought to be able to reform, to some extent, the way in which it proceeds.

In terms of our dealing with that kind of question, I had the impression that it likely would follow our dealing with what we wanted to do with regulations, but I take your comments quite seriously. I think those are very good comments and I will undertake to review with the clerk, as well as with Mr. Neumann, how we can best dispose of these things in a more efficient manner.

In some cases that I have just alluded to, it is going to take some legislation to really resolve it so that it is not necessary for people to trot forward with these things. The guidelines ought to be embodied in legislation so they can simply read the legislation. Then, if they quality, it

can be dealt with in an administrative way rather than through this committee. It would save expense and time for everybody concerned.

Mr. McCague: You are talking about reform and I am talking about reforming the process.

Mr. Chairman: I think your comments are quite valid and I am quite prepared to review our list with that in mind.

Mr. McCague: We might eliminate 10 bills next week, for instance, if they are the kind we had this morning. I think it is fair to say that sometimes there is an objection raised that cannot be answered here. For instance, if I had stuck to my point on the first bill this morning, I suggest that my stubbornness would have told you that you would have scheduled the matter two weeks hence with the staff of Mississauga here.

With all due respect to the gentleman we had here, he did not answer any of the questions and there were conflicts in what he said. We had Mr. Neumann telling us that they changed it to January 1, 1987, to accommodate the ministry. He did not say no, but he was saying it was the decision of the council of Mississauga to put in January 1, 1987. There was a little conflict there, but I thought I would be nice to you and not get you into any procedural wrangles.

Mr. Chairman: You are always nice to me. I never have a problem that way.

Mr. McCague: However, I think we could get rid of a bunch of them--that is the short answer--if there is no controversy, if the members who are here would agree with proceeding in that way.

Mr. Ruprecht: I think you are making a good point. I certainly see no objection to asking the chairman to look at the overall procedure and to try to determine what would take more time and what would take less time and act accordingly. In addition, even though I say this somewhat in jest, Mr. Chairman, you have to make these meetings a bit more interesting.

Mr. McCague: I tried this morning. You could have spoken up and made--

Mr. Ruprecht: We are looking for some leadership here.

Mr. Chairman: The regulations part was so fascinating I was sure you had your fill for a while. Might I make a suggestion, if it is agreeable with all of you, that we will proceed with the list we have listed for April 20, but the list for April 27 will either be pulled forward to April 20 or put back to May 4 in order to do two things: to clear out April 27 for regulations, and to make sure that on both April 20 and May 4 we have as full a calendar as possible. If that is agreeable, I take it that any notice requirements are otherwise waived in terms of the committee.

Ordinarily, we would tell you exactly what is going to happen next week a week in advance. It may be that we will not know exactly what bills come up until later this week or until next week, but I will try to make sure we have a full calendar. Is that agreeable?



Mr. McCague: Yes. I would ask, though, that you check with Mr. Philip on a quick change like that and make sure it is not impossible.

Mr. Chairman: I would be doing that anyway; in fact, with not only Mr. Philip but also with other members from his caucus, if they choose to be involved with it, and of course regular members of the committee. I will try to make sure that party is fully informed.

Mr. McCague: With that, I will make a motion that we adjourn. I think you will have trouble arguing with that.

Clerk of the Committee: Can I ask for clarification before we adjourn? I get the feeling from the committee that you do not necessarily want the applicants to be here. We have had a lot of discussion about the Driving School Association of Ontario. We are bringing them back. I feel they should be here. It was my feeling that there would probably be questions on the other associations like this that we would be considering next week.

Mr. Chairman: I think we have to discuss it with the government representatives, frankly. The driving school, for sure, has to come back, because that was far from a clear-cut case. With the others, it is up in the air, subject to what the government has to say, I suppose. We will have to make a judgement call on it. They will obviously have the option of appearing if they want to appear so they are sure it will be dealt with that day. It is up to them.

Mr. McCague: The import of what I was saying is this: I do not think there is any obligation for this committee to call witnesses. It is only the polite thing to do. I do not think there is a witness out there who is going to object to the fact that we are prepared to deal with it and pass the bill in his absence.

Mr. Chairman: I appreciate that.

Mr. McCague: If there is any discussion or holdup by the members or holdup by a ministry staff, then they should be here. But to have had these people here this morning, I think did not make sense.

Mr. Chairman: You are making an excellent point.

Clerk of the Committee: Therefore, what I will do is that when I call these people, I will tell them that they can come if they would like to come, not necessarily for next week especially but when we know there will be discussion, and if I am told by the ministry there is no problem, I will tell them they can come or not.

Mr. McCague: The simple way of saying it is that no bill will be turned down without their presence. That is what we are saying.

Mr. Chairman: I know that when we reach the ones in the city of Toronto, we will be sure to have lots of people.

Mr. McCague: I will be all for the city and the members will be opposed.

The committee adjourned at 10:48 a.m.

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T-17

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

UNITED CHURCH OF CANADA ACT

UNIVERSITY OF WESTERN ONTARIO ACT

CITY OF HAMILTON ACT

CHARTERED INSTITUTE OF MARKETING MANAGEMENT OF ONTARIO ACT

ONTARIO MUNICIPAL MANAGEMENT INSTITUTE ACT

DRIVING SCHOOL ASSOCIATION OF ONTARIO ACT

WEDNESDAY, APRIL 20, 1988





STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

CHAIRMAN: Fleet, David (High Park-Swansea L)

VICE-CHAIRMAN: Beer, Charles (York North L)

Cleary, John C. (Cornwall L)

Fawcett, Joan M. (Northumberland L)

McCague, George R. (Simcoe West PC)

Pollock, Jim (Hastings-Peterborough PC)

Pouliot, Gilles (Lake Nipigon NDP)

Ruprecht, Tony (Parkdale L)

Smith, David W. (Lambton L)

Sola, John (Mississauga East L)

Swart, Mel (Welland-Thorold NDP)

Clerk: Manikel, Tannis

Also taking part:

Campbell, Sterling (Sudbury L)

Charlton, Brian A. (Hamilton Mountain NDP)

Epp, Herbert A. (Waterloo North L)

Ferraro, Rick E. (Guelph L)

Reycraft, Douglas R. (Middlesex L)

Staff:

Mifsud, Lucinda, Legislative Counsel

Witnesses:

From the Ministry of Municipal Affairs:

Neumann, David E., Parliamentary Assistant to the Minister of Municipal  
Affairs (Brantford L)

From the Ministry of Consumer and Commercial Relations:

Levine, Katherine, Solicitor, Companies Branch

From the United Church of Canada:

Hamilton, John P., Legal Counsel; with Weir and Foulds

From the Regional Municipality of Hamilton-Wentworth:

Plant, Ray M., Solicitor

From the Chartered Institute of Marketing Management of Ontario:

Ruby, Malcolm N., Legal Counsel

From the Canadian Institute of Marketing:

Jarrett, Jim H., National Chairman

From the Driving School Association of Ontario Inc.:

Kennaley, W., Government Relations Consultant

Christianson, P., President, Young Drivers of Canada

Lloyd, Richard, Vice-President, Chief Instructors Association

From the Ontario Safety League:

Andrunyk, Stephen F., President and General Manager

From the Canadian Professional Driver Education Association Inc.:

Burger, Frank N., Chairman

Bell, Irving, President

Lefevre, John, Master Instructor

From Safe Drivers of Canada Ltd.:

Naeem, M., President and Manager

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Wednesday, April 20, 1988

The committee met at 10:14 a.m. in committee room 1.

THE UNITED CHURCH OF CANADA ACT

Consideration of Bill Pr29, An Act respecting The United Church of Canada and The Canada Conference The Evangelical United Brethren Church.

Mr. Chairman: I see a quorum. The first item on the agenda is Bill 29, An Act respecting The United Church of Canada and The Canada Conference The Evangelical United Brethren Church. I believe Mr. Epp is the sponsoring MPP. Mr. Epp, would you like to come forward? There will be a report that will be read by the clerk, but perhaps we can have you, Mr. Epp, introduce the people who are with you and then I will have the clerk read a report into the record.

Mr. Epp: I have with me today two gentlemen I would like to introduce who have done a lot of work on this particular bill. Despite the fact that it may seem fairly routine, there has been a significant amount of work that has been done.

To my immediate right is John Hamilton, the solicitor, and to his right is Dr. Howard Brox, who is the general secretary of the division of the mission in Canada of the United Church of Canada. These gentlemen would be prepared to answer questions that you may have regarding the bill.

I might say that the preamble to the bill is fairly lengthy. It would seem to me that is something a lawyer has probably drafted. One of these days, we are going to have to probably put that in modern language so we can all understand it.

Clerk of the Committee: I have here the report of the commissioners of estate bills dated January 27, 1988, and signed by Justice Goodman and Justice Grange.

The report reads: "A hearing was held by the commissioners of estate bills on Wednesday, January 27, 1988, at 9:30 a.m. in the chambers of the honourable Mr. Justice Goodman at Osgoode Hall, Toronto, Ontario, to consider and report with regard to Bill Pr29 being an act respecting the United Church of Canada and the Canada Conference The Evangelical United Brethren Church.

"The notice of the hearing was duly served on the solicitors for the United Church and the public trustee, both of whom were represented by counsel at the hearing.

"The commissioners are pleased to report that no evidence has been presented to them nor any submission made nor does there appear to be any grounds for objection to the said bill, and, presuming the allegations contained in the preamble to be proven to the satisfaction of the House, it is reasonable for the bill to pass without alteration."

Mr. Chairman: Mr. Epp, perhaps you or either of the sponsors might



speak to this matter. I might add that given the size of the audience and the agenda, the greater the brevity, probably the greater the appreciation of the committee.

Mr. Epp: I am going to ask Mr. Hamilton to comment very briefly on it.

Mr. Hamilton: This is one of these bills that is just to pick up the pieces. As it is set out in the preamble, there was a union between the two churches some 20 years ago, but The United Church of Canada is a federal corporation and the EUB is a provincial corporation, so they could not amalgamate. Accordingly, this bill is to wind up the EUB and ensure that any property, past, present and future of the EUB becomes the property of the United Church.

I do not think I need to say anything more than that. I would be happy to answer any questions.

Mr. Chairman: Is there any comment from either of the government representatives?

Mr. Haggerty: There is no comment from the Ministry of Consumer and Commercial Relations.

Mr. Chairman: Are there any questions from any member of the committee? Is there any other person in the room who wants to speak to this matter? There not being any other person, I think first of all I would like to have all of sections 1 through 8 carried, the preamble, the title and the bill carried.

Sections 1 to 8, inclusive, agreed to.

Preamble agreed to.

Title agreed to.

Bill ordered to be reported.

#### UNIVERSITY OF WESTERN ONTARIO ACT

Consideration of Bill Pr37, an Act respecting the University of Western Ontario.

Mr. Chairman: Next is Bill Pr37, an Act respecting the University of Western Ontario. Mr. Reycraft is the MPP. He is here with two gentlemen. I would ask you, Mr. Reycraft, to introduce the people with you.

Mr. Reycraft: I was here to listen to your admonition to the previous presenter and I shall try to be brief.

The purpose of Pr37 is to clarify some conflict-of-interest provisions that are contained within the University of Western Ontario Act of 1982, and also to allow the addition of one member from the faculty of applied health sciences to the membership of the senate of the university.

With me today I have Tony Little on my right, Steve Jarrett on my left.

They are here to provide any additional explanation that might be required and to respond to any questions that members of the committee may have.

Mr. Chairman: Is there any comment from the government representative, including anybody from the Ministry of Colleges and Universities who may be in the body of the room? There not appearing to be any, is there any question from any member of the committee?

Section 1 to 4, inclusive, agreed to.

Preamble agreed to.

Title agreed to.

Bill ordered to be reported.

Mr. Reycraft: Thank you, Mr. Chairman.

Mr. Chairman: The appreciation is extremely high.

#### CITY OF HAMILTON ACT, 1987

Consideration of Bill Pr67, an Act respecting the City of Hamilton.

Mr. Chairman: The next matter that is before the committee is Bill Pr67, An Act respecting the City of Hamilton. Mr. Charlton is the sponsor. Mr. Charlton, could you introduce the gentleman with you? Perhaps If you would like, either or both of you, to give an explanation of the bill?

Mr. Charlton: This is Ray Plant. The purpose of Bill Pr67 essentially is to re-enact and to alter the numbers on the board of the Hamilton Entertainment and Convention Facilities Inc. The explanatory notes set out the changes in terms of the balance on that board between council and noncouncil.

Mr. Chairman: Is there any comment by any of the government representatives?

Mr. Neumann: The structuring of the board is something that could fall entirely within the authority of the municipal council. However, if the committee deems that it is something the Legislature wishes to handle, the Minister of Municipal Affairs (Mr. Eakins) has no objection, but the city clearly has authority to structure the board itself. I believe it is being done to provide a greater long-term security in that future councils are going to have to come to the Legislature to change the composition. I understand that is the thrust of it, the purpose of coming here.

Mr. Chairman: Thank you, Mr. Neumann. Are there any questions by any members of the committee?

Mr. Sola: I would just like to ask what the reason was for dropping three, so to speak, lay people, and putting three councillors on the board?

1020

Mr. Plant: The noncouncil membership of the board remains the same, at nine. I am merely increasing the council membership from four to seven. The



noncouncil members of the board still remain a majority. There is no change in their number.

There are a number of reasons the council wishes to have an increased representation of council members on the board so that the board itself would increase from 14 to 17, but the main one is that the city is the major funder of the Hamilton Entertainment and Convention Facilities Inc. Out of a current budget of some \$5.5 million, about \$2.2 million is supplied by the city. They felt that because of the increasing activity and increasing budget of the board, they should have more representation, more accountability to the council.

As a follow-up from that, they wish to have an assurance that there are council members at the meetings. Frequently there are problems with quorums, of council members not showing up because of other commitments they have, because there are very few council members. They felt this was one way of resolving it without actually touching the noncouncil membership of the board.

It is quite true that perhaps it would be more desirable from a policy point of view to have the council have an unlimited discretion, but because of the divisions on the council in getting the bill this far, it was felt that an open process and deliberately making it difficult to change the number by having to come to the Legislature would be the best path to follow.

Mr. Callahan: I am curious. Is this the superboard, as it were?

Mr. Plant: That is correct.

Mr. Callahan: That was created, I think, in 1986.

Mr. Plant: In 1985.

Mr. Callahan: There was a little concern at that time by the people in the arts as to whether the combination of this would result in a greater emphasis being placed on things other than the arts. Has that proved to be true?

Mr. Plant: No, it has not. There is a committee dealing specifically with Hamilton Place functions. There are admittedly three functions to the HECFI board: Hamilton Place, Hamilton Convention Centre, and the Victor K. Copps Trade Centre-Arena. They are very different functions, as you can appreciate. The Hamilton Place function has worked very well within the board as a committee of the board.

Mr. Callahan: So all the concerns that were expressed on that occasion have not come to fruition.

Mr. Plant: That is correct.

Mr. Sola: I was just looking at the compendium and the background information. The second part says that the amendment is to section 9 of the act so as to increase the number of council members by three and reduce the number of citizens by three.

Mr. Plant: With respect, that was a resolution by the city council in December 1986. When the bill was readvertised according to the standing orders of the House, the matter went back to the council. They revoked their resolution and passed the one that is now before you in March 1987. They revised their consideration of the members of the board. The original

proposition, if continued, would have kept the board at the same number with three more council members. The way it is, they increased the board by three and kept the noncouncil members the same.

Mr. Sola: OK, that clarifies things. Thank you.

Mr. Chairman: There apparently being no other questions from members of the committee, is there anybody in the audience who wants to speak to this matter? There not appearing to be anyone, do I have a motion to move all sections, the title, the preamble, and I guess the bill itself?

Sections 1 to 3, inclusive, agreed to.

Title agreed to.

Preamble agreed to.

Bill Pr67 ordered to be reported.

#### CHARTERED INSTITUTE OF MARKETING MANAGEMENT OF ONTARIO ACT

Consideration of Bill Pr5, An Act respecting The Chartered Institute of Marketing Management of Ontario.

Mr. Chairman: The next matter that comes before us is Pr5, an Act respecting The Chartered Institute of Marketing Management of Ontario. I believe Mr. Sola is going to be appearing on behalf of Ms. Hart, who is otherwise the sponsoring MPP.

In the light of the fact that my list shows only one person coming on behalf of the applicants and I now see three, perhaps the gentlemen could introduce themselves to the committee, or Mr. Sola could, whoever wants to commence.

Mr. Sola: As you can see, I am not Ms. Hart. I was informed by my office this morning that I should have brought a skirt and represented her. As you can see, she was unable to attend, so I will present the bill and introduce the people who will have the actual knowledge behind the bill. They are Malcolm N. Ruby, solicitor; William Johnston and Mr. Jarrett. I would like one of them to take over, because I am not that familiar with the bill.

Mr. Ruby: Mr. Chairman, on my right is Jim Jarrett and on my left is Bill Johnston. I am Malcolm Ruby.

The purpose of the bill is to create a regulatory body to regulate and accredit marketers. Marketers are becoming a very specialized profession in the province. Canada, Ontario included, is the only Commonwealth country not to have a body of this type.

Are there any questions of Mr. Jarrett, Mr. Johnston or myself?

Mr. Chairman: There may be a comment from the government.

Mr. Haggerty: Yes. I will speak for the Ministry of Consumer and Commercial Relations in regard to Bill Pr5, An Act respecting The Chartered Institute of Marketing Management of Ontario.

It sets up a provincial institute--a federal one has been in existence



since 1983--with a board and a registrar to regulate, conduct, prescribe qualifications and promote the education and interests of the members. It does not affect the right of a nonmember to practise in Ontario.

This bill, if enacted, would not require any administration on the part of the ministry. It establishes and incorporates an association or institute to privately carry out the duties under the act. It does not affect the programs of the Ministry of Consumer and Commercial Relations or impinge upon its legislation directly. Business practices of commercial operators are already covered by its general statute, the Business Practices Act. These bodies are incorporated under the Ontario law.

The legislative review project set up through the Ministry of Consumer and Commercial Relations to review our consumer protection laws suggested that the different approaches to regulation, including self-regulation, should be looked at. To this extent, we see any move of an industry to regulate the conduct and affairs of its members as a positive thing.

The ministry has not experienced a large volume of complaints from these industries. We have some complaints from consumers regarding representations made by--this is the driving schools. I am off base on that one. The ministry really has no objections to it.

Mr. Chairman: Thank you. Are there any questions?

Mr. Swart: I do not have any objections to this either, but as a matter of interest, I wonder why--I presume it was from the advice of the ministry--it was brought forward in the form of a private bill rather than a government bill. I know it will probably get through more quickly, but it just seems that something of this nature, general policy--

Mr. Callahan: These days--

Mr. Swart: No comments; I have the floor.

Mr. Chairman: They might be able to bring it up by petition.

Mr. Swart: I just wonder. A general policy like this usually comes in as a government amendment to a bill or as a government bill. As a matter of interest, I wonder why that route was not followed.

Mr. Chairman: Do the applicants have any comments in that respect?

Mr. Ruby: I guess we looked at precedents for legislation of this kind and they were private bills. In our compendium, we have listed four of them. We merely followed the pattern that had already been set for other groups, if that answers your question.

Mr. Swart: It answers the question. I recall some of this kind of legislation going through under government bills. I have no objection to it. It was a matter of interest why general policy like this should come in as a private member's bill. I move--

Mr. Chairman: Before you move that, I would like to see if there are other questions.

Mr. Swart: Not a bad idea.

Mr. Chairman: I know at least one member has other questions.

Mr. Swart: We would not attempt in this party to dominate discussion in any place.

1030

Mr. Chairman: I am sure we are well aware of that.

If no other member has a question, I have a couple of questions. On clause 11(d), I am not sure whether this is best posed to the sponsors or best posed to the government representative, Mr. Haggerty, but I notice that there is a power to pass bylaws prescribing fees payable to the institute, and there does not appear to be any restriction on that discretion. It can be as high or as varied or whatever as the institute would like to determine, should this bill pass. I am wondering whether you have any comment on that.

Mr. Ruby: My understanding is that this clause was put in just to prescribe membership fees of what nominal nature they might be. Would you feel more comfortable if we inserted "reasonable fees" or "reasonable fees for membership" or if we were more specific?

Mr. Chairman: I would probably personally feel that way. I do not know how other members of the committee feel, but when I read it I was perhaps surprised a bit that it was an unlimited discretion, and I did not know whether that was just a matter of following other precedents or whether--

Mr. Ruby: The fees would be set by the board. I am not sure what the procedure is. Can we just insert something to qualify that?

Mr. Jarrett: If I may say, what would happen is that the board would make a motion to the annual general meeting that the fee should go up from what it is now to, let us say, \$75 to \$100 for a full member, but the membership then would have to approve of that increase.

Mr. Chairman: Just a moment, please.

Interjection.

Mr. Chairman: I appreciate your position. Is there a question?

Mr. Callahan: I was trying to find in the bill what the schedule refers to. It has a number of names. What section is it? If you are--all right, section 3.

Why would you do that through the bill as opposed to just convening a meeting and electing directors?

Mr. Ruby: I do not suppose there was really any difference in doing it either way; just having done it at this time, we knew it would be done.

Mr. Callahan: The difficulty I have with it is that it takes a bit of the democracy out of the first meeting. I would think that should be left up to the first meeting. Otherwise, what you have done is like putting a slate of officers forward, incorporating it into a bill and not really allowing the shareholders, or the members I guess, to vote on that themselves.

Mr. Ruby: If I can answer your question, I would think that at the



first meeting, democracy would prevail. Any changes that might be desired by the membership could be made at that time. I think it is just as a matter of convenience that it was put this way, so there would be some direction or some structure to the first meeting.

Mr. Callahan: I would just like to inquire of the legislative counsel, has that ever been done before? I have never seen it done before. I may have seen it on an application for incorporation, but--

Ms. Mifsud: If there already is an existing association, you have to have a continuity, a transitional provision, so that it can act before it has its next meeting. That is why it is set out so that until the bylaws take over--and the bylaws may call for elections every two years or every one year--at that point they would replace them, but this just sort of grandfathered what is so that they can carry on in the meanwhile until they can get reorganized. It is quite usual when there is already an existing association.

Mr. Callahan: I have never seen it before. It sort of gives a little permanency. OK.

Ms. Mifsud: They are answerable to their membership, like any normal corporation.

Mr. McCague: This bill has passed the legal scrutiny of two ministries and the legislative counsel, and I think we should not waste too much time having it looked at by the lawyers in the committee. There are some of us here who--

Mr. Smith: I just want to say to the group here making this presentation that, whoever decided to bring it through as a private member's bill, and in the light of what happens in the House of late, I am sure you made a very wise move, because what may have taken 10 minutes here to get it through might take you 10 days to get it tabled in there. I just wanted to make those comments.

Mr. Chairman: Keeping in mind that we are likely to receive other bills of this type, I have a question again with respect to subsection 15(2). There is a reference there to using certain initials for the institute. Do you have any evidence about whether any other group or individual, not necessarily in the marketing management field, uses either those initials or ones very close to those initials?

Mr. Ruby: This question was raised when we were attempting to formulate some designation for members. I believe the ministry people who looked at it considered that question, checked that out and decided that those particular initials were unique and would not be confused with the designations for other professionals.

Mr. Chairman: I would like to deal with the bill.

Sections 1 to 22, inclusive, agreed to.

Preamble agreed to.

Schedule agreed to.

Title agreed to.

Bill ordered to be reported.

# ONTARIO MUNICIPAL MANAGEMENT INSTITUTE ACT

Consideration of Bill Pr27, An Act respecting the Ontario Municipal Management Institute.

Mr. Chairman: Mr. Campbell is the sponsoring MPP. Perhaps, Mr. Campbell, you can introduce the gentleman with you and advise the committee what the purpose of this bill is.

Mr. Campbell: First of all, let me apologize for the emergency, which was well put out.

Mr. Chairman: No problem.

Mr. Campbell: I did not know the proper procedure for addressing you, except for letting you know that there was a potential emergency while I was here.

I would like to introduce Dick Picherack, the commissioner of social services for Metro Toronto, who also is the president of the organization.

Keeping to your admonitions about the timetable, I will keep my comments brief.

Basically, the intent of this bill is to allow for a more professional designation for municipal employees going through a number of programs. A number of your committee members have been former municipal politicians and understand the need, in the increasingly complex style of government our municipalities have, to have more of a training ground and more of a professional designation.

My understanding is that this could lead to the practice of municipal professionals comparable to engineering or law in some aspects. They will not be engineers or lawyers, but they will certainly carry a similar professional designation. The possibility exists because universities and community colleges are now being involved more and more in these types of training programs and would allow this to happen.

Those are my comments. If any committee members have questions, Mr. Picherack could probably expand or elaborate on the things I have mentioned.

Mr. Chairman: Perhaps we could see whether there is any comment from the government representative.

Mr. Neumann: The bill was reviewed by the Ministry of Municipal Affairs, which has a distinct interest in this area, and also the Ministry of Consumer and Commercial Relations.

There were two areas of concern, which have been resolved. One was the initial attempt to use the word "professional." This has been changed to "certified." The second was the phrase, "using the organization as a clearinghouse for municipal publications and policy on management." In view of the fact that the ministry itself is heavily involved in this area as well,



that was changed. As a result, the bill, as it is now worded, is acceptable to the ministry. We do not have any objections to it.

I do have with me Peter-John Sidebottom, who is policy adviser in the ministry on municipal education and training secretariat within the ministry. He is extremely familiar with this organization and its request for legislation. If there are any questions members of the committee have, Peter-John Sidebottom is here to answer them.

Mr. Chairman: Are there any questions from members of the committee? Is there anybody in the audience who wants to comment on this bill? There not appearing to be anyone, do I have a motion to carry sections 1 through 11, the preamble, the title and the bill?

Sections 1 to 11, inclusive, agreed to.

Preamble agreed to.

Title agreed to.

Bill ordered to be reported.

#### DRIVING SCHOOL ASSOCIATION OF ONTARIO ACT

Consideration of Bill Pr7, An Act respecting the Driving School Association of Ontario.

Mr. Chairman: Mr. Ferraro is the sponsoring MPP. Members of the committee should have a letter addressed to me from the Minister of Transportation (Mr. Fulton).

Members will also recollect that this is a matter that came up before this committee in December, I believe, and was put over for further consultation on the part of the sponsors, some individuals who were opposed, as well as comment from the government. I believe that before we are done we will have some additional commentary from another government representative.

Mr. Ferraro, perhaps you could introduce all the individuals with you today. Are there any people who want to comment on this bill other than those sitting here? Yes, there are a number at the back. Just so you are aware of what is happening, you will have an opportunity to speak to the matter. We will hear from the proponents first, and then they will be questioned by members of the committee. Then you will have an opportunity to speak to the committee, and the committee may choose to ask questions of you as well.

Mr. Ferraro: It is my pleasure again to be here and to sponsor Bill Pr7. Being a very humble and introverted individual, I will be very brief and I want to introduce the consultant and spokesman for the group, William Kennaley, to my left. I would ask Mr. Kennaley to introduce the other members of the delegation.

#### DRIVING SCHOOL ASSOCIATION OF ONTARIO

Mr. Kennaley: Members of the Driving School Association of Ontario and other organizations who are here in support of this bill include, to my immediate left, Richard Lloyd, who is the vice-president of the Chief Instructors Association. On his left is Peter Christianson, who is president of Young Drivers of Canada. In addition, we have some other members of the

association in the audience. I see two, Fred Gutenberg and Robert Brown.

When we were here the time before last, we made a presentation on December 2. The transcript for that was transcript T-2, it shows here, of the committee. I had made a presentation, Mr. Burger had made a presentation and Mr. Andrunyk from the Ontario Safety League had made a presentation. At the point when we ran out of time, we already had replied to Mr. Burger's presentation and we were in the process of replying to Mr. Andrunyk's. With the indulgence of the chair, I would just like to go ahead and continue in that vein, unless there are any questions ahead of time. I see some other members of the committee who were not here at that time. If that is all right, we will--

Mr. Chairman: Put on the record whatever you think you need to put on the record. Go ahead.

Mr. Kennaley: I doubt whether members of the committee have transcripts available to them, but I just want to start off by referring to Mr. Andrunyk's remarks starting on page T-20, paragraph 4. Mr. Andrunyk was concerned with the wording of the preamble to the bill. There was some discussion about it with the committee, and I just want to clarify that this is not a bill by the government, it is not a public bill, and the language in the preamble to the bill does not refer to government policy. The language refers to the government of the members of the association. I just want to clarify that to start with. This is a bill for regulating the membership of members of the Driving School Association of Ontario only and people who wish to become members.

Mr. Andrunyk referred to the objects of the association and wondered whether those were compatible with the objects of the government. Of course, I cannot speak for the government, but the objects of the bill are quite clearly set out in section 3, and there are about eight of them. I would be pleased to answer any questions on those.

Turning to another section of the transcript, page T-20, paragraph 7, I think Mr. Andrunyk's attitude, if you will, or concerns about the driving school industry are somewhat too pessimistic in the circumstances. I think it has been clearly indicated, and we will bring some evidence later to that fact, that DSAO is a responsible body. That is why we are here, of course, and that is why they would like to have this legislation in place.

Then referring to page T-20, paragraph 8, there is a question about the numbers. I am not too sure that anyone in the province knows exactly how many driving schools there are. I have done a brief survey of that and I am prepared to table the information for the benefit of the committee, if it wishes, setting out the latest membership numbers for the Driving School Association of Ontario. I would suggest that, perhaps, others who claim an interest in this be prepared to do the same thing.

1050

Referring to Mr. Andrunyk's remarks on page T-21, paragraph 1, this bill does not give the DSAO members a right to say, "We are approved by the government of Ontario." It does not give the DSAO any rights like that at all. It simply gives the DSAO the right to confer certain designations on its members if they meet the criteria that are contained in the bylaws. It does not prohibit or prevent anyone from practising their profession outside DSAO. Indeed, there is no intention of the association to want to do that.



In paragraph 4 of the same page, I would just like to clarify that, for membership in DSAO, having the government licence is not the only requirement for obtaining the designations that are laid down in the bill. It is the minimum requirement, and that is set out quite clearly in subsection 8(1) of the bill.

Appeals: Mr. Andrunyk was concerned about the appeals process. Well, the association's bylaws do currently have a process for internal appeals. One would expect they would stay, notwithstanding what the bill has, and the bill will be in addition to that. The appeals to the courts, over and above those that are contained in the bylaws, are just added protection for those who have a problem. In fact, that sort of does not exist under the current set of circumstances.

The "good character" clause: Mr. Andrunyk had concerns with the "good character" clause which is cited in section 8 as being one of the criteria. I would just like to point out that, in that respect, we do not have a problem with that coming out, for instance, if the committee felt that should come out. But, I should just point out that clause (h) of regulation 464 of the Highway Traffic Act contains similar language. The committee can refer to that, if it will, in respect to the people who are eligible to receive the driving instructor's licence from the province. The language is similar. As I say, the association does not have a problem and would not be terribly concerned if that particular wording came out.

On page T-22, paragraph 1, Mr. Andrunyk reiterates his position that the Ontario Safety League is interested in seeing the quality of driving education improve in the province and I think that is quite clearly stated in the objects of this bill in section 3.

To reiterate, this bill is for the benefit and government of DSAO members. DSAO is a voluntary not-for-profit organization. We understand that government policy is to not grant exclusive licence. I think there was some discussion on that very point with an earlier bill here this morning.

That sort of concludes my comments on Mr. Andrunyk's position. I would like to, at this time, refer back to the membership and the numbers and I would like to have Mr. Christiansen comment on that particular aspect of the issue.

Mr. Christiansen: Thank you. I would first like to state that Ontario has perhaps the most competitive field in driver education anywhere in the world and we are very proud of that competition because we feel that competition improves the breed.

We have no trouble with anybody looking at this bill and saying, "Is it the best for Ontario drivers?" Just to state that position clearly, our president is unable to be here because he is in Hong Kong developing a program for one of the world's largest schools.

Last week our organization trained driving school operators from Denver, Colorado; from Seattle, Washington; and trained a school owner from Chatham, Ontario. We were visited by the Finnish driving school association, which stated that the Ontario system was probably the finest in the world.

I only state that because I think it is important that you know we are truly trying to attain professionalism for our industry. As for the numbers that we represent, we teach 86,000 students a year through the Driving School

Association of Ontario. That is 65 per cent of new Ontario drivers. We feel it should be made apparent to this committee that we are not a small group. We are the largest segment in Ontario.

We have 113 schools within our membership. We have another approximately 130 driving instructors within our membership, but driving instructors historically do not become members of our association. The driving schools represent them. My own organization has 300 instructors in Ontario and each and every one of them is well aware of our involvement with the DSAO and at 65 per cent, we do represent the largest contingent in this province. The intent is to finish the job of professionalizing the industry in Ontario.

Mr. Kennaley: One additional point, Mr. Chairman. The last time the chair had some questions, or one particular concern in any case, which can be found on page T-25, paragraph 6. That was with respect to the designations. We have had a search done through the industrial and business information service at the University of Waterloo library and I am able to report that, based on that search, the designations are not being currently used by any professional organizations as professional designations, to outline professional criteria.

One of them, ACI, apparently is used as the acronym for the Association of Canadian Interpreters, but there is also a whole range--I think, something in the order of 28 various acronyms for ACI. One of them, for instance, is army council instruction, and this sort of thing.

I can table this information for the committee's benefit, if it wishes, but--

Mr. Chairman: I think that might be useful.

Mr. Kennaley: But there are no professional designations containing the initials ACI, ADI, ASI or accredited driving school, which was the language contained in the bill.

But this was to allay the chair's concern that was raised specifically on that point.

Mr. Chairman: OK. When the clerk returns, perhaps we can get that circulating. She will be back momentarily.

Mr. Kennaley: OK.

Mr. Chairman: That can be circulated to the members of the committee, please.

1100

Mr. Kennaley: I see Mr. Swart is gone, but Mr. Swart raised the question at page T-27, paragraph 6. He inquired as to why this is not a public bill and I think that the answer to this is now evident, that the government does not want it to be a public bill. I guess they did not want Bill Pr5 to be a public bill either and perhaps all the others have been dealt with.

Mr. Swart raised the additional concern about whether or not, if someone ceased to be a member of DSAO, he would have to take down the shingle. The answer to Mr. Swart's question is yes, he would, and I think quite appropriately so.



If any member of this committee ceases to be an MPP, that is it. The initials come off. I think that is true of any other professional association regardless of what it may be. I do not mention that as a point of dissension or to be quarrelsome but just to point out that yes, the answer to his question is that the shingle comes down. That is basically all I have in reply to Mr. Andrunyk's concerns.

Mr. Haggerty: I do have some comments from the Ministry of Consumer and Commercial Relations. Bill Pr7, An Act respecting the Driving School Association of Ontario, sets up an association with a board and registrar to regulate, conduct, prescribe qualifications and promote the education and interests of members--that is, the driving instructors and schools. The bill does not affect the right of a nonmember to practise in Ontario.

This bill, if enacted, would not require any administration on the part of a ministry. It establishes an incorporated association or institute to privately carry out the duties under the act. It does not affect the programs of the Ministry of Consumer and Commercial Relations or impinge upon our legislation directly. Business practices of commercial operators are already covered by our general statute, the Business Practices Act. These bodies are incorporated under the Ontario law.

The legislative review project set up through the Ministry of Consumer and Commercial Relations to review our consumer protection laws suggested that different approaches to regulations, including self-regulation, should be looked at. To this extent, we see any move of an industry to regulate the conduct and affairs of its members as a positive thing.

Our ministry has not experienced a large volume of complaints from these industries. We have some complaints from consumers regarding representations made by driving schools, but these are covered under our Business Practices Act.

Mr. Chairman: I have questions from Mr. Ruprecht and Mr. Callahan.

Mr. Ruprecht: Do I understand the government's position correctly, then, that Mr. Haggerty was--

Mr. Haggerty: This is just one ministry's comments, the Ministry of Consumer and Commercial Relations.

Mr. Chairman: Have you already read the letter from the Ministry of Transportation?

Mr. Ruprecht: Yes, I have.

Mr. Chairman: Does this have a somewhat different view?

Mr. Ruprecht: I have read the letter and it seems to me that the two ministries are not objecting to this particular bill and nor are they openly in support of it. In that sense, they dovetail into one conclusion. Personally, I think this kind of attempt is of use to a great number of the public who wish to know in some way, who wish to have a designation of, who belongs to this association and who does not.

I would assume, however, that belonging to the association would set certain standards. Being of the opinion that this is of great use, not only to the association itself and the driving school instructors but also to large

numbers of the public, would you not, therefore, think that qualifications or a certain set of standards or rules might be useful to consider when a person becomes a member or seeks to become a member?

You are taking one step at a time and I think that the position of the Ministry of Transportation makes me think these kinds of steps do take time. In the future, you may certainly want to consider that.

Having said that rules and regulations or standards might be a good idea to place in this specific legislation--that is my first question, Mr. Chairman--how would you feel about the slight criticism of not having placed them within this specific bill?

Mr. Kennaley: Just briefly, I think that section 8 speaks generally to the minimum criteria that would be accepted. Does the bill before you have the amendment attached to it?

Mr. Chairman: Not the one that I have.

Mr. Kennaley: We asked for an amendment. In fact, I have a copy of the information here--I do not know whether it is from the clerk or from the legislative counsel. It is from the legislative counsel--for a motion to be moved here to strike out subsection 8(1) and substitute:

"Every registered member of the association who has satisfied the criteria as set out in the bylaws of the association"--that is how it reads now, I guess--"and who holds a valid driving instructor's licence issued by the Ministry of Transportation and Communications under the Highway Traffic Act"--and that is 484--"may..."

That is the minimum criteria. Since we started working on the bill--

Mr. Callahan: It should only read Ministry of Transportation.

Mr. Kennaley: I am just quoting here.

Mr. Callahan: That is the way we have it in the bill. It is the Ministry of Transportation.

Mr. Kennaley: OK. I was not sure about that.

That is the minimum criteria. Since we started dealing with the bill, another committee of the association together with the Chief Instructors' Association and some other people who are involved in the industry, have, in fact, sat down and drafted a set of standards which are proposed. I have a copy of them here. I do not think they are complete, but I can have Mr. Lloyd speak to those if you wish. He can explain it, perhaps, more thoroughly than I.

We have done exactly what Mr. Ruprecht has suggested we should do. This has already been set to paper.

Mr. Ferraro: If I may interject, I think Mr. Callahan's point is well taken. The bill does not say "Ministry of Transportation and Communications," and I believe the proponents of the bill would not object to that amendment.

Mr. Callahan: It should say "Ministry of Transportation" because that is what it is called now and that is what the bill has in it at the



moment. But when he read it, he read "Ministry of--

Interjection: Either way.

Mr. Chairman: Actually, they are still using old letterhead, I guess, but I believe you are right. It is just "Transportation" now.

Mr. Smith: It is MTO now.

Mr. Kennaley: We will not object to having the correct name of the ministry in there.

Mr. Callahan: It might be a good idea not to even put it in there, because they change so dramatically and may be back for an amendment to clarify the whole situation.

Mr. Ruprecht: Back to my original point, I do have one other question. I would assume that you would simply add these regulations as a criterion to anyone who wants the designation.

Mr. Kennaley: That is correct. They will be done through the bylaws.

Mr. Ruprecht: I think that would make it more appealing, having said that.

My final question would be about the people who are supposedly opposed to it. This really strikes me as fairly strange. I cannot think why anyone would want to oppose a body of people who have come together to create a designation and to make it easier for the public to understand where the good instructors are and where to go. Consequently, I am somewhat puzzled to find that some persons would even think of opposing it. Could you address yourself to that point?

1110

Mr. Kennaley: I think there are two basic concerns, as I understand them and as I read the transcript from the last meeting here. One was that they did not go far enough. The OSL apparently wanted to have the bill compulsory and so gather in everyone--

Interjection: What is the OSL?

Mr. Kennaley: --whether they wanted to be in or not. Certainly, if it was government policy to proceed in that way, the board of the Driving School Association of Ontario would not have any problem with that.

Mr. Ferraro: OSL is the Ontario Safety League.

Mr. Kennaley: I am sorry. OSL is the Ontario Safety League: Mr. Andrunk. I think he is here.

It is government policy, as we understand it, not to have compulsory legislation and not to have what is normally called "exclusive right to practise" in these types of organizations. I think, whether Mr. Andrunk of the Ontario Safety League agrees or disagrees with that position, that seems to be the position of the government. I am certainly not going to argue with the government.

Mr. Ferraro: Why should you be the exception?

Mr. Kennaley: There are 95 of them or something sitting there. I am not in any position to come in and read petitions.

On the other point, I can only speculate and infer from reading the transcript that Mr. Burger's concerns are that people who are not in DSAO might be somehow excluded from being able to practise their profession under this legislation. Of course, that is not true either. Section 9 quite clearly points that out and makes it very specific. I am at as great a loss as you are, Mr. Ruprecht, to understand the objections to this bill.

Mr. Ruprecht: Thank you very much.

Mr. Callahan: I have a couple of concerns. First, I would suggest that under subsection 8(1), you not put in the name of the ministry. Let us say that someone came from another province, who is equally validly qualified but is here on a short-term basis. That would prevent him from joining your association, I would presume; plus the fact that the name is changed twice. If you have it in there, you have got something that is unclear. I just offer that as a suggestion.

The other thing that concerns me, and I should have picked it up in the other bill, was that in subsection 8(2), it says that if you use the designation you are guilty of an offence, but it does not say how that offence is dealt with. Normally, if you are guilty of an offence, that is a breach of a public or private statute. There has to be some forum within which that can be prosecuted.

Mr. Chairman: There is a general statute that would apply, the Provincial Offences Act.

Mr. Callahan: I have some concern. We already have the courts backlogged unbelievably with a whole host of offences. As I say, I feel a little reluctant to say this because I should have caught it on the other one, but what you are actually doing is creating more offences that can be brought before the courts. I think that is really the function of a public statute, not a private statute.

I have never seen that before in any other groups which came before this committee on previous occasions. Maybe I can ask legislative counsel if that has always been the case.

Ms. Mifsud: Yes, Mr. Callahan. One of the main reasons for these bills is to have an offence provision so they can protect their designation once they have it, or else it is useless having it.

Mr. Callahan: We do not give that type of protection to someone who has a name as an incorporated company. We do not give them the right to bring a quasi-criminal action for, I guess, infringing upon their exclusive name.

Mr. Ferraro: Sure you do.

Mr. Callahan: A criminal action?

Mr. Ferraro: Well, not a criminal--

Mr. Callahan: Not a criminal action. You have civil proceedings you



can take. But what I see here is that you are actually setting up, by this and the former one, a quasi-criminal sanction for using the designation of a particular group.

I am surprised that there was not a comment on that by one of the ministries. That is certainly a departure, I think. If it is not a departure, it should be relooked at, because you are going to have a whole host of them coming before justices of the peace who are going to have to be hearing cases such as that type. I would think a civil remedy is ample. I do not know if anybody wants to comment on that, but that gives me a little bit of concern.

Mr. Kennaley: I will comment on the second problem first. I am not a lawyer, of course, but I have been involved in a couple of these in the past. It strikes me--and I have looked at them all kinds of them, maybe 100 of them--that they all seem to have that clause in it. Of course, we did have a tremendous amount of co-operation and advice from the legislative counsel when the bill was being drafted, and we are prepared to accept that advice, for what it is worth.

On the first point, re the licensing, again I guess it is standard language and the licence is issued by the Minister of Transportation. For people coming into the province on a temporary basis or otherwise, clause 3(b) of regulation 464 covers off the concern that you raised, Mr. Callahan.

Mr. Callahan: Sorry, 3(b) in the bill?

Mr. Kennaley: No, in the regulation, which refers to granting the licence.

Mr. Callahan: But you specifically mentioned that "the person has qualification for admission, holding a valid driving instructor's licence issued under the Highway Traffic Act." I would think that might very well be contrary to the Charter of Rights and Freedoms because it denies the opportunity for any other person from any other province to come in and apply for designation. I will leave that with you, legislative counsel. You might want to mull that over.

But I do have a concern about the offence, and I wish to go on record as indicating that. I think that could cause a whole morass of problems, in that you are giving a quasi-criminal remedy to certain groups and other groups would have to rely upon a civil injunction to stop something from taking place.

For instance, if I have a patent, copyright, trade name or trademark, the only remedies that I have, I suppose, short of misleading the public, is an infringement application, which is really a civil remedy. Here, we are giving them a quasi-criminal remedy. I just have concern about that, and for that reason, if that remains in there--I suppose I cannot; I would be inconsistent because it went through on the other one, but I think that should be registered, recorded and addressed.

Public statutes normally carry that, but I--

Mr. Ferraro: Mr. Chairman, if I may interject, I am not a lawyer, fortunately. With respect to the chair, to Mr. Callahan and others, I appreciate Mr. Callahan's concerns but I say respectfully I would hope that the committee would not digress from my view on this topic too much because the clerk and legislative counsel have been involved with it actively and, indeed, the logic, of course, for having that offence is to justify one having

a private bill in the first place. There are probably hundreds, if not thousands, of these private bills that are undertaken with that same clause in them. I say that respectfully to my friend, Mr. Callahan.

I guess I just want to lodge my concern here that I hope your decision is based on tradition, if you will, and the normal proceedings as established by normal political procedure. I think Mr. Callahan's issue is an important one but I hope it does not interfere, quite frankly, with the workings of the committee on this issue.

1120

Mr. Callahan: Let me allay my colleague's concerns. As I said, it would be inconsistent to vote contrary to it for that reason, but I would like that registered and I would like that brought to the attention of the Attorney General (Mr. Scott,) because I think that is a matter that should be looked at.

Ms. Mifsud: These bills are all sent to the Attorney General for comments. I might add that there are many public bills--for instance, lawyers, accountants, engineers--with exactly the same provision in them. Every private bill that sets up a self-governing association has this provision in it, and the Attorney General reviews them all.

Mr. Chairman: We passed a number of them in December.

Mr. Callahan: What can I say if he approves it? Some day, somebody hopefully will read this. When we have a backlog a mile long, with everything from soup to nuts in there, having a trial before a justice of the peace, I think it is absolutely going to create a problem. But who am I to question the higher authority?

Mr. Smith: Mr. Kennaley, you made the comment earlier in your presentation that you thought you had an idea as to the number of driving schools in Ontario. I do not think you gave that number. Just for the record, I would like to have some idea. The information I have here is that there are about 100. Is that what you have found? Are there more or less than that?

Mr. Kennaley: I will be pleased to discuss that. On March 9, I surveyed the Yellow Pages of each of the 54 published telephone directories in Ontario. I extracted the numbers of those advertising under the heading of driving instructor, driving instruction or école de conduire, which is the standard way they advertise in the Yellow Pages.

That includes double counting. For instance, some of the schools are advertising in each of the Metro directories, of which there are a number: North York, Scarborough, Etobicoke and so on, even Durham and Peel region. I found that there were 451 organizations advertising themselves as driving schools, and I estimated that perhaps 50 to 60 of those might be double counted.

Mr. Smith: So it could be in the neighbourhood of 400.

Mr. Kennaley: That is correct.

Mr. Smith: And you feel that your new association will have about 65 per cent of those under your jurisdiction.

Mr. Christiansen: Of the students taught, as as opposed to the driving school--65 per cent of the students taught.



Mr. Smith: Not necessarily 65 per cent of the schools themselves?

Mr. Kennaley: No.

Mr. Smith: How many of those possible 400 schools, then, might you have under your association?

Mr. Kennaley: The numbers I have been provided with by the association indicate 113. They have to be broken down, because some schools have classrooms and some do not. Of the DSAO members, 113 of the schools have classrooms. There are 23 of those with multiple classrooms, with 55 Young Drivers franchises included in that lot. How many of the others is almost impossible to glean. There are 127 associate members, for a total of 240.

Mr. Smith: When you say associate members, who might they be?

Mr. Kennaley: Perhaps Mr. Lloyd can answer that question.

Mr. Lloyd: Associate members tend to be driving instructors who operate one-car organizations. They are not members of a driving school themselves, but they may list themselves as a driving school. They have no classroom facilities. For example, that is the way I am; so I am an associate member.

Mr. Smith: I just wanted to clarify that for the record.

Mr. Chairman: Mr. Smith, you will see in the letter from Mr. Fulton, at the bottom of the first page, he indicates their estimate is that 33 per cent of all the driving schools in Ontario are DSAO member schools.

Mr. Smith: I wanted to put it on the record.

Mr. Chairman: There is also a reiteration there of the distinction between the number of DSAO members who are also Ontario driving instructors. I think that was the point that Mr. Christiansen also dealt with.

There being no further questions from members of the committee, gentlemen, I would ask you to perhaps take a seat in the first row and I am sure you will remain eagerly listening to the next group of witnesses.

Those people who would like to comment, I believe, would be the Ontario Safety League and the Canadian Professional Driver Education Association.

Mr. Kennaley: May I just make one request of the chairman? I presume we will have an opportunity to reply since they have been here before as well.

Mr. Chairman: Subject to what takes place and what the committee wishes, in all probability I would expect you will have an opportunity to respond to anything that comes up, particularly if there is anything that is new.

Is there only one individual who wishes to speak in opposition?

Mr. Andrunyk: I am from the Ontario Safety League, sir.

Mr. Chairman: Yes, but I believe there is another group that wants to speak. If they want to speak, they should come up now.

I appreciate the two groups may have different views but none the less if you are speaking in opposition, I would like to get them all up front. Is there anybody else in the room other than those who are sitting in front of me who wish to speak to this matter?

Mr. Burger: Yes, Mr. Chairman. He just went out for a minute.

Mr. Chairman: OK. When he comes back in if somebody at the back would get his attention, we will arrange for him to speak to the matter. If you can get him now that is even better.

Perhaps you could introduce yourselves to the committee and commence in whatever order seems reasonable.

Mr. Andrunyk: I am Steve Andrunyk, and I represent the Ontario Safety League, which as you know is the provincial safety body and in fact is the forerunner of the safety movement in Canada. I thank you for affording me this second opportunity to appear before you and make some comments on Bill Pr7.

Let me say at the outset that the Ontario Safety League has no objection to any group trying to improve safety in Ontario, because that in fact is our mandate.

Mr. Chairman: Excuse me. Before you go any further, I would just like to have everybody else introduce themselves, please.

Mr. Burger: My name is Frank N. Burger. I am the chairman of the Canadian Professional Driver Education Association. To my left is Irving Bell, president of the association, and next is John Lefevre, master instructor and high school teacher, who has been teaching driver ed in high schools and commercially too.

Mr. Chairman: Thank you very much. I am sorry, Mr. Andrunyk.

Mr. Andrunyk: I would also like to reiterate that the Ontario Safety League has a lot of respect for DSAO, many of whom are members of our own commercial driving school approval program.

Since I appeared here the last time--and I am not going to argue against the comments that Mr. Kennaley made, because I think they are irrelevant to what I am going to say now--we have had a chance to look at this bill closely since I was here on December 2.

I think we should recognize that there are two distinct and separate elements or components involved in the driving school industry in Ontario. The first component consists of owners and operators of Ontario's commercial driving schools. Some of these owners and operators are also driving instructors. They have organized themselves into the Driving School Association of Ontario, with which this act deals specifically.

It is important for us to understand that at the moment there are no regulations whatever to govern driving schools in Ontario, although a few municipalities, such as the corporation of the city of Ottawa, have their own bylaws and make certain requirements upon owners before they can open a driving school.

At the last hearing we learned that it was very difficult to estimate



the number of driving schools in Ontario, and today we heard a figure of 450. Our estimate is between 350 and 400 driving schools, of which the Driving School Association of Ontario has about 120.

The second component is the instructional body, which at the present time has four categories of instructors who are regulated by either the Ministry of Transportation and/or the Ministry of Education. The first category, and the highest one, is the master instructors, who have the responsibility to train the high school teachers for their high school program. Their number stands at about 75, although many of them, I understand from the ministry, are not active.

Second, we have the teachers in the high school program who hold an Ontario teacher certificate or a letter of standing from the Ministry of Education and a driver education instructor certificate from the faculty of education. Only these teachers can teach in-class in the high school driver program.

Third, we have the chief instructors, who have been qualified by the Ministry of Transportation to conduct the four-week course for driving instructors in Ontario. There are about 4,000 of these who hold licences. These are the 4,000, so those are the four categories. Here we have two distinct and separate components of the driver education system in Ontario: One is regulated and one is unregulated at the moment.

Here is what we have. We have a Bill Pr7, which I understand is to give self-regulation to the Driving School Association of Ontario, and that is fine. But this bill also gives the right to the Driving School Association of Ontario to regulate its professionals, the 4,000-and-some-odd people who are the professionals in the system. In fact, you have a unique situation here. Not only do you have self-regulation, but also you are giving an association the right to regulate the professionals.

It is as if we had a large group of accounting firms who regulated the chartered accountants or a large group of law firms who regulated the lawyers, the school boards regulating the teachers or professional engineering companies regulating the professional engineers. I believe that is basically wrong. Surely no professional group, lawyers, teachers or whatever, would be quite happy to say what Mr. Christiansen said, "Well, the owners now represent their driver-instructors in the association," because you will notice that the driving instructors have no voting privileges. Only the owners can vote as to what happens in the driving school association.

My argument is that this bill is unique, and I think this committee should realize it is a unique bill. I think it is ill conceived. I would like to see the driving school association regulate its own driving schools and let the professionals, who are the instructors, put up a bill and regulate themselves. I think that is the only way you can have an effective professional driving school industry in Ontario.

Thank you very much, Mr. Chairman.

Mr. Chairman: Thank you very much. Do committee members want to hear from everybody who is in opposition first? That is the way I propose to proceed. That seems to be acceptable.

Mr. Burger: Thank you, Mr. Chairman. In a meeting on December 2, I stated our opposition. I stated who we are. We are the oldest driver and

traffic education organization in Ontario. We stated at that time that we have 258 members. We were the first organization, besides the Ontario Safety League, who had government-certified instructors.

I went to our law firm and I heard nothing here about the legal terms of being accredited. Mr. Chairman, you yourself did ask the question whether anyone is using "accredited" or a similar name. Since our instructors, and there are 200 of them in Ontario, are certified by the Ministry of Transportation as instructors, that means that we have, yes, made known to the public that we teach courses which are with certified instructors.

Our law firm took it very seriously and went to, and I would like to quote, the New Collins Thesaurus. "Accredited" means "appointed, authorized, certified, commissioned, deputed, empowered, endorsed, guaranteed, licensed, official, recognized, sanctioned, vouched for." The Doubleday Roget's Thesaurus quotes "accredited" as "certified, recognized, official, qualified, authorized, chartered, licensed, empowered, sanctioned, deputed, endorsed, approved, vouched for." Webster's New World Dictionary says "accredited: to authorize, certify."

We had some driving schools in court because of advertising. At one time, driving schools advertised: "Warning, beware: Only if you are approved by the Ontario Safety League are you a qualified driving school." We took this to the federal government, to the Ministry of Consumer and Corporate Affairs, and there were criminal charges laid.

We had another case where the Metro Licensing Commission wanted to retest, and it says in this bill it wants to test. I refuse to be tested by people who took the chief instructor course where I was a supervising instructor.

If I may take some of Mr. Ruprecht's remarks, Mr. Ruprecht said it would be something for the public. It would confuse the public. The driving school association today can operate just the same as any other organization. They are in a minority.

We had quotes here from driving instructors, and I respect Mr. Andrunyk's response. I have here the quote from yesterday from the Minister of Transportation in Kingston, Ontario, "In our province at the present time we have 3,587 driving instructors licensed." I have been one of them for over 30 years. I still function as such and I am proud of the profession.

In Ontario we have about 400 licensed driving schools. Of those 400 driving schools, the majority are licensed in Metropolitan Toronto or area, which has around 200. That is quoted from the Metro Licensing Commission.

I wonder that anyone wants to have those powers I just read from our lawyers here. I want to comment on Mr. Callahan's remarks. We are already certified by the minister. We are senior instructors, and I just received another certificate here from the Minister of Energy and from the Minister of Transportation. In other words, we have taken courses. They hang out of my ears, ladies and gentlemen.

Who are these people who want to re-educate, who want to license, who want to test this industry? We refuse to accept that, and if it does take legal action; then this is what our law firm has promised to do.

I just want to show what I said, that we have been advertising "with



government-certified instructors." This is our logo. Mr. Kennaley reminded the committee here that we are a federal organization. We are chartered by Ontario, not by the federal government, although I think this name should be just as good for Ontario as it would be for all of Canada.

I want to be brief now, because I heard Mr. Bell wants to talk about it, and also Mr. Lefevre. I have a letter here from a driving school in Scarborough. It states: "To whom it may concern: As a member of the DSAO (Driving School Association), I, the undersigned, oppose Bill Pr7 in its entirety. I am not aware of any consensus within the association approving Bill Pr7."

Mr. Chairman, if you want to pass that on to the committee, here it is.

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Mr. Chairman: Could we get that and get a copy? Also, you made a reference. You had a yellow piece of paper that you were saying---

Mr. Burger: This here?

Mr. Chairman: --and a white one. If you think they are useful--

Mr. Burger: Let me give you--

Mr. Chairman: --you alone should make copies. It is only if you think it is helpful to the committee. It is up to you.

Mr. Ruprecht: I would like a copy.

Mr. Burger: You will notice in our leaflet advertising for those courses approved by the Minister of Transportation. This is a copy of a certificate from 1978. It states the fee for this particular course was \$200. No one mentioned here how much a man or woman who wants to be a driving instructor now has to pay. I will make that statement: \$800 to \$850 for a four-week course.

As I mentioned before, I have trained all the chief instructors in this province. There was no number given to this committee here. At that time, there were about 30 chief instructors who graduated. At the present time, if there are seven of those chief instructors still active, then that is a great number. So who do they represent?

I could say that the majority went bankrupt. I am sorry. I want to retract that. Not the majority, but some of them went bankrupt. I saw that when I had those people in the car. In other words, they could not operate their own driving school. Now they want to govern the majority of the industry, over 3,500? I do not think that this organization or any other organization is qualified to licence or to govern this industry.

Mr. Ruprecht: Could we make a copy of that certificate you just showed us by the ministry? Is that possible?

Mr. Burger: Yes. We have 200 of them.

Mr. Ruprecht: I just need one.

Mr. Bell: Which one is that, Canadian Professional?

Mr. Burger: That is a senior. I have this. There are 200 of them.

Mr. Bell: That is a photocopy itself.

Mr. Burger: I want to make the final comment. I graduated in Europe as a teacher and driving instructor. The standards there 50 years ago were far tougher than the standards are here. I am proud of what our association has done for it. We started the driving instructor courses now at community colleges. We pioneered them, not the Driving School Association of Ontario.

The object of driver training is not just to teach people how to operate an automobile. I have not heard from the association how many lives they want to save by putting on this bill. I want to quote, in 1973, four countries that have upgraded their driver training. The government legislated them. In Japan, accidents were reduced in one year by 11 per cent, in Holland, by 6 per cent, in West Germany by 4.2 per cent and in France by 2 per cent.

If our government wants to reduce the slaughter on our roads, then only the government can do that, no private organization. I think that the minister is quite serious about it and we will appeal to the minister at the same time. It has been going on for many, many years now.

Mr. Chairman, I thank you, and we will oppose that bill right to the end.

Mr. Chairman: Have you got a copy of the letter from Mr. Fulton?

Mr. Burger: No.

Mr. Chairman: Perhaps we better make sure that you see a copy of the letter.

Mr. Burger: We intend to make a presentation to Mr. Fulton.

Mr. Chairman: Before you do that, you might want to read his letter.

Mr. Burger: We are aware of his letter. We were at the conference. I have met Mr. Fulton three times now.

Mr. Chairman: Whenever the clerk comes back, I will make sure that we give you copies.

Mr. Burger: OK. Thank you.

Mr. Chairman: Mr. Bell, are you speaking next?

Mr. Bell: Yes, thank you. I would like to make my brief short and to the point, referring to Bill Pr7.

I would like to refer to page 2, clauses 3(a), 3(b) and 3(c) of the bill.

Clause 3(a) says: "to improve the professional standards and promote the interests of its members in carrying out their duties as private professional driving instructors in the province of Ontario."

The Canadian Professional Driver Education Association has always set standards to promote and improve the interests of its members, and in carrying out their duties as private professionals in the driving school industry.



I would like to point out that the Canadian Professional Driver Education Association has 12 classrooms in Metro Toronto; also, we have classrooms outside of Metro Toronto. They are owned and operated by individual members of our association. Each of these schools is inspected by a member or members of the association, making sure that each classroom meets the standards required by our association, for example, proper classrooms; proper desks and chairs; a proper curriculum as prescribed by the Ministry of Transportation, using the ministry textbook, Roadworthy; and, of course, a qualified in-class teacher.

When the commercial classroom schools meet the standards required by our association, they are given a certificate showing that they qualify. Also, every student who graduates from our courses receives a certificate from the association, with the signature of the driving instructor and the course director on the certificate. The reason I mention this is that our association has been doing this for years. We are very proud of each and every one of our classrooms and also of our members.

The Driving School Association of Ontario, I am sure, does not have a classroom approved by its association. Yes, they may be approved by the Ontario Safety League. Again, referring to clause 3(a), where it says "to improve the professional standards," it does not even practise what it preaches. It has an outside body, such as the Ontario Safety League, doing what it is supposed to be doing itself.

The driving school association does not even have its own certificates. Each school makes its own certificate or has it printed by whatever printing company; then the Ontario Safety League sells these schools a green sticker to be pasted on their certificates, which says, "We are approved by the Ontario Safety League"--not by the Driving School Association of Ontario, but by the Ontario Safety League.

As a matter of fact, just a little quote I have in here: We did have a member which is now a member of the Ontario Driving School Association. I will even mention its name: Future Drivers of Canada. It was a member of our association, then joined the other association. They were using our certificates with the Ontario Driving School.

When I found out about this, I went up and spoke to the owner, Malcolm Mansfield. He was amazed. He said, "Well, why not?" I said: "What do you mean, why not? You belong to a different association, yet you're giving them our certificates." They do not even know. I say let them organize themselves before they talk about Bill Pr7.

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I would also like to refer to clause 3(b), "To hold examinations and prescribe tests of competency deemed appropriate to qualify for admission to the various categories of membership in the association."

Mr. Burger, myself and many, many others in the driving school industry--some who do not even belong to any association--have all kinds of certificates and credentials. We have taken quite a number of courses, as Mr. Burger had mentioned before, where it actually comes out of our ears, from the ministry or courses approved by the ministry, and we passed them all. I have all kinds of certificates here to prove that.

As a senior instructor, and an advanced instructor, I taught many

instructors to become instructors through the Ontario Safety League and also through the community colleges.

If the Driving School Association of Ontario approves of Bill Pr7, it would mean, not only to myself but to many others like myself and Mr. Burger who have taken all these courses, if we want to join their association, it would mean that we would have to do exams and prescribed tests to see if we are competent to qualify for the various categories in the association, as it states in clause 3(b). Who is to say I must take exams and tests? Do they classify themselves higher than the government of Ontario? Who gave them their qualifications?

I would like to go back just a little to what Mr. Burger had mentioned about the government. Back in 1966 there was another association. They thought the same way, that they are going to retest all the instructors. They were even given the blessing of the Metropolitan Toronto Licensing Commission. All the instructors banded together, and some of them did not even belong to any association. They hired a lawyer, they took it to court and it did not even last 10 minutes in court when the judge threw it out. The judge said the same thing as I am saying here: Who are they to overrule the government?

Mr. Callahan: Excuse me, Mr. Chairman, I wonder if I could interrupt. Because of an oversight, I apparently am not a voting member of this committee, and I thought I should make everybody aware of that. I am going to leave. I say that because if this vote takes place, it might be a close one, and I do not want to think people thought I just, in the political vernacular, got sick. I am sorry for interrupting you.

Mr. Bell: That is OK.

Mr. Chairman: It is merely the lack of a substitution form being filed with the committee, but your contribution otherwise is, as always, quite useful.

Mr. Callahan: I may not be able to get my head through the door.

Mr. Bell: I must agree with Mr. Andrunyk of the Ontario Safety League on page T-21. He writes, and I quote, "I believe the government would be hard pressed to deny such recognition since providing recognition to only one segment of the industry could be construed as discriminatory."

I would like to refer to clause 3(c), "to provide formal training and educational facilities to its members." The Canadian Professional Driver Education Association has conducted driving instructors' courses and senior instructors' courses approved in accordance with the standards required by the Ministry of Transportation, as Mr. Burger mentioned as well. We have conducted these courses at Humber College, south campus, and also Niagara College in Welland and in St. Catharines. These courses were conducted not by a chief instructor, but by master instructors Keith Wallace and Doug Lynn.

This is a brief outline of what our association has done and, hopefully, will continue to do.

In closing, I sincerely hope that the committee will deeply examine the powers it will be handing to the Driving School Association of Ontario and the future problems that it could cause if Bill Pr7 is passed.

Thank you very much.



Mr. Chairman: Thank you very much.

Mr. Burger: May I just interject? Can I produce this letter also? I just want to read it; it is short. It is from George Brown College.

"Dear Mr. Burger:

"On behalf of George Brown College and the Ministry of Transportation and Communications, we wish to thank you for participating in the chief instructor driver education course.

"This course is setting new precedents in the area of driver training and the instruction and information you provided for the participants will be of great value to them when establishing future instructional courses."

I have one more point to make. Driving schools are approved by Mr. Andrunyk, the safety league, to which we have no objection at this time, but we do have objections to the fact that a driving school goes and advertises, "Insurance certificate for \$100." I call this public fraud. I want it on the record.

Mr. Chairman: I am not sure how that bears on Bill Pr7.

Mr. Burger: It has something to do with the industry that would then go and advertise the same thing. We are approved by the Ontario government.

Mr. Chairman: OK.

Mr. Andrunyk: May I make a note that this school is not approved by the Ontario Safety League?

Mr. Chairman: OK. Is your point that it is approved or it is a member of--

Mr. Burger: The school is not a member of our association.

Mr. Chairman: Is it your point, though, that that school is a member of the DSAO?

Mr. Burger: I did not make that point, because I am not aware of it.

Mr. Chairman: All right. I might add that I appreciate the information drawn to our attention in that respect; I do not know that it bears on Pr7.

Mr. Lefevre: Mr. Chairman, my name is John Lefevre and I am a master instructor, a high school teacher. I have taught high school for 20 years and I have worked for various driving organizations, the Ontario Motor League, the Canadian Professional Driver Education Association and Young Drivers of Canada. I have taught the Ontario Safety League defensive driving courses. I have been an in-car instructor, I have been an in-classroom teacher, and also I have been an examiner with the Department of Transportation.

My purpose today is to add a significant voice to these proceedings on behalf of many classroom associates, teacher associates. As secondary school teachers, we are regulated by the Department of Education. We have our standards to become a high school teacher. We must have a university degree,

we must go to teachers' college, and then to teach young drivers, to teach teenage drivers, we must also take a special course in driver education. Your own Department of Education regulates this.

If this bill is passed, we may be giving up the right, the regulatory power that the government already has, and placing it in the hands of a private, well-meaning, I imagine, but unaccountable body. I wonder at the credibility of this party. I wonder about their educational background, and I wonder about their philosophy and goals.

Teaching teenagers is hard enough. Some of you may have teenagers at home and you probably know what we have to face every day as we go into the classroom.

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Under the best conditions, with qualified, university-trained teachers, it is a tough job. Without proper professional training, the course could deteriorate into a sham of movies and tests, a course without any real educational value. At present there are very strict controls on teaching. The problem is the lack of enforcement. I am amazed that this government would even consider giving up its control as a regulatory body. Indeed, I would think that after these hearings you will look at ways of tightening your control on this industry.

I see a great need for more liaison between the government and the driving industry, perhaps in a government-controlled regulatory body set up to ensure minimum standards in compulsory driver education, as set down by the recommendation handed down this week on the insurance industry. This body must be impartial, though, and it must be accountable. The government is accountable to the people. This body must be accountable somehow too.

Driving is a matter of life and death. Our government has seen fit to entrust the education of our teenagers to qualified teachers. Driver education is probably the single most important course a student takes. This is a course where if you make one mistake, it may be your last. It is not English. It is not history. It is driver education. You would not want a student to pass with 50 per cent. Fifty per cent means that half the time he is on the road he is going to have an accident.

Members of the committee, I urge you to make sure that the qualifying body, the governing body, the regulatory body, is accountable. The government should take that control. The government should keep the control that it has. The standards must be kept rigid and they should be established, as they are, by the Ministry of Education and the Ministry of Transportation. They should be regulated by those same ministries.

Mr. Chairman: There may be questions from members of the committee. I am sorry. Do you want to speak?

Mr. Naeem: Yes.

Mr. Chairman: Please give your name and your association.

SAFE DRIVERS OF CANADA LTD.

Mr. Naeem: My name is Mohammed Naeem. I have a few points which I will hand over to you after this.



Mr. Chairman: OK. Do you represent an organization?

Mr. Naeem: Yes. The name of my driving school is Safe Drivers of Canada Ltd. and we are in Oshawa. My driving school has been in operation since 1978. We have a classroom and we teach both in-car and in-class. After they are finished the course, the students get a certificate. I am the president and manager of the driving school. I just want to mention a few points in this case.

1. Mr. Chairman and members of the committee, as you know, there are hundreds of associations in this province, all kinds of associations in our profession. The government cannot make a law for every association, giving it the power to operate in this province. I will say this is unconstitutional.

2. The Canadian Professional Driver Education Association is the oldest association in this province. If the government can make a law for DSAO it can make a similar law for the CPDEA. It means we are going to have two laws. There will be a clash between the two organizations.

3. I think this is the most important thing: driver education should be controlled by the government, not by a private association like DSAO or any other organization. I think just a handful of people are trying to dominate the whole system of driver education, which is not fair to anybody, even to the members of the public. Also, I think not all driving schools and not all driving instructor in this province have the bill available. This bill should be advertised in the paper and everyone should know what is going on.

As Mr. Burger said, there are many driving schools--I do not know their total number--and hundreds of driving instructors. They do not know about it or know what is going on here.

Everyone should know an opinion of every driving school. The opinion of every driving instructor should be sought on this point. It should not be a handful of people doing this thing.

Finally, I feel this bill is against human rights, against the Constitution of Canada, against the Bill of Rights. I am sure that if the bill is passed, it will be held by the court as unconstitutional, against human rights, the Bill of Rights and the Constitution.

Not only should this bill be advertised in the papers, but also every member and even the general public should say something about it. They should say yes or no, whether the driver education system should be controlled by the government or just by a single private organization.

I feel they should be controlled. It is most important. Hundreds of thousands of people get killed on the road every year. But one private organization cannot be responsible to run the whole system. Therefore, I feel the government should control the whole system of driver education and make the laws.

Mr. Chairman, if you want, you can have a copy of this. I want to hand this over to each member.

Mr. Chairman: Thank you very much. Are there questions? I think Mr. Ruprecht had indicated the desire to ask a question.

Mr. Ruprecht: Yes, thank you. I have a question for Mr. Andrunyk.

Looking at Bill Pr7, and having heard your statement, I am wondering whether you could tell this committee, first, if you object to certain sections of this bill; second, whether you think this bill is not salvageable and, third, what your proposal would be, in the spirit of co-operation, to make some sense out of this conglomeration?

Mr. Andrunyk: I have appeared before the Ministry of Transportation and Communications, as it used to be, on many occasions, trying to put the Ontario Safety League's view, as the neutral body in Ontario, as to how best to deliver a very high class driver education program in Ontario.

Under the present system, you are not going to have any cohesion. There are too many bodies and associations which will not give in to any one of the other organizations. So we proposed three options several years ago. We felt the best option was for the government, if it wished to have a higher standard of driver education, to put forward legislation which would regulate all the driving schools in Ontario, to give them specific requirements for classroom space, type of cars, qualification of instructors--the whole gamut--which would make it a highly professional organization.

The previous government and the present one, I believe, are reluctant to regulate. We said the second option was perhaps for a neutral body like the Ontario Safety League to study and see if we could, on behalf of the government, try to bring some sense to this--and I use the word loosely--fractured industry.

After we examined it with our legal people and my board of directors, it was not approved because we feel it would cost us somewhere in the neighbourhood of at least \$500,000 to operate this type of organization with the necessary things in place. That was about five years ago, so maybe today we are looking at \$1 million. Who is going to provide that funding?

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Mr. Ruprecht: How much?

Mr. Andrunyk: About \$1 million today, if you are going to regulate all the driving schools in Ontario, because you would need inspectors, you would need a lot of things, and of course you would have a lot of legal fees. I happen to sit on the disciplinary committee of the Institute of Chartered Accountants of Ontario. If any of you are chartered accountants, you know the system they have, which is very expensive in legal fees and what have you. This is what we would have to get into.

My board said, "Why do we want to get involved in this?" It is not our main mission. What we are trying to do is to urge other people to do it. I would be quite happy if some driving school association like the Driving School Association of Ontario would come up with a bill and say, "We are going to regulate the owners." Forget about the instructors. That is, as I said, a different component. That is the professional component, which I think should regulate itself. Let the DSAO meet with the major components or associations and try to come up with some understanding as to how they could best do this to meet the needs of Ontario. I think it is possible, with goodwill and understanding as to where you are going to go.

Unless you do that, we are going to have these types of meetings for ever and anon. You are going to have sniping and you are going to have people accusing each other of fraud--I should not use the word "fraud," it is



probably too strong--but of not really doing what they say they do. Believe me, we have a lot of schools in Ontario that do not belong to the DSAO, the Canadian Professional Driver Education Association or the Ontario Safety League.

If you look at the Yellow Pages, they say, "This school is approved by the government of Ontario," or, "This school is approved by the Ministry of Transportation," which is false. But they have a driving certificate from the government of Ontario and they feel that gives them a right to say that.

Mr. Ruprecht: If I get you correctly, this bill in its present form is not acceptable to you.

Mr. Andrunyk: No, it has to be reworked.

Mr. Ruprecht: Your recommendation would be, as far as the Ontario Safety League is concerned, to come up with an organization, of whatever name or stature really, that will regulate the owners of the industry. That is what you are recommending.

Mr. Andrunyk: That is right. Then at least you have one aspect of it, which is the important aspect.

Mr. Ruprecht: Mr. Burger, what do you think of this bill in terms of certain sections that bother you, or are you also thinking that this bill is not acceptable? If it is not, then what would your recommendation be?

Mr. Burger: This bill is unacceptable. What you see in this bill, the majority of it, is what a driving school association, incorporated, has to present to the Minister of Consumer and Commercial Relations. In other words, there is nothing in that bill which will save our people on the road, nothing at all.

May I just make this comment? One of the MPPs the last time asked about Mr. Svensson, who is the president of the association. Mr. Svensson is in Hong Kong. We are trying to promote safe driving in Canada, not in Hong Kong. It puts me off. I know Mr. Svensson. He is one of those chief instructors.

Interjection: That is a cheap shot.

Mr. Burger: Whether it is a cheap shot or not, I did not heckle anyone from there.

Mr. Chairman: Let us not have any commentary from people other than through the chair in the proper manner.

Mr. Ruprecht: In the spirit of co-operation, I know you have some disagreements among different persons in this business, but what would your recommendation be? What would you like to see, in the spirit of co-operation?

Mr. Burger: In the spirit of co-operation, they are the junior driving school association of Ontario, which represents only driving school owners. You heard Mr. Kennaley mention that the driving instructors are associate members. I do not have to tell you what say an associate member has in our association; it is none, zero. We have only full members.

If this association had approached us and said, "Can we work out something for such a regulation?" then it would have found co-operation. But

no, they are seeking advertising power. This is what they are seeking because many of them probably cannot do the business, as Mr. Andrunyk has stated here. And he stated the same thing which I feel.

Mr. Ruprecht: So Mr. Burger, then, if I understand you correctly in answer to the question, your recommendation would be to sit down with the association--

Mr. Burger: The Driving School Association of Ontario.

Mr. Ruprecht: --and to work out some kind of, if not a compromise, at least some way to come to a consensus. Is that correct? You would be willing to sit down with them. Do I hear you correctly?

Mr. Burger: If they invite us.

Mr. Ruprecht: Invite you. That is your recommendation? Because I have asked you specifically, "What was your recommendation?" And your answer was, "They haven't approached us." I take it from there that you would like for them to invite you to work something out. Is that correct?

Mr. Burger: It is possible, yes. My recommendation is, first, to scrap this bill and then make it a better way, where we are going to promote together. Mr. Christianson from Young Drivers of Canada loves competition. I never have fought my competition. I tell the public who I am.

Mr. Ruprecht: Thank you, Mr. Burger. Mr. Lefevre, are you of the same opinion?

Mr. Lefevre: What is the opinion?

Mr. Ruprecht: What would you recommend?

Mr. Lefevre: There were a number expressed.

Mr. Ruprecht: You heard it twice.

Mr. Lefevre: I have known Mr. Burger for many years and I still do not know what his opinion is. He has an awful lot. He is a very opinionated man.

I guess my basic concern and recommendation would be, first, to cancel this bill and then in conjunction with the safety league have the various associations, probably representatives from the Ministry of Education, as well as the Ministry of Transportation, get together and formulate, as Mr. Andrunyk says, a bill. I believe the only way the driving schools are going to do anything is if they are legislated to do it by the Ontario government.

But it has to be an impartial bill. It has to be set up properly. The fear I have with something like this bill going through is that we are probably looking at money. Anybody who becomes a member of this association can now advertise certain things and therefore they can get higher fees. That will be an advertising draw for students. Parents do not know who is teaching. They just look at this and they say: "Oh, it's been passed by the government. It must be good. We're going to take it."

So they will take the course. They will pay the higher costs. It may cost \$30 now to be a member of this organization, but they will have the power



to increase that cost themselves, without government regulation. They will have the go-ahead then to make franchises out of that, which is not all bad, but that should not have to be anything to do with the government.

Mr. Ruprecht: Thank you very much. Mr. Chairman, do you mind if I ask the Driving School Association of Ontario one question now?

Mr. Chairman: I would rather have Mr. Smith ask his questions and we can complete this. Otherwise, we will go back and forth longer than time is going to permit us. I think that is the concern I have.

Mr. Bell: Mr. Chairman, may I give one comment on what was said here?

Mr. Chairman: I would like that, yes.

Mr. Bell: Thank you. What do I think of this bill? Naturally, I am certainly not in favour of it at all, as per comments that were made. But what I would like to see is sort of an advisory committee, perhaps made up from our association, from the Driving School Association of Ontario, and perhaps members here in this committee.

We could sit down and iron out a lot of things instead of sitting here and quarrelling and debating back and forth. As it stands now if this bill were to be passed, in my opinion it would definitely be a conflict of interest between that association and our association. If they were given the power and we had to come to them to become members, oh, they would just love it.

Talking about tests and exams we would have to do, as I told you, it would just stand to reason that perhaps most of us would fail because of this conflict of interest: "I didn't like Mr. Bell, because I remember when he spoke," or Mr. Burger or vice versa. I am very scared of that. That is why I would like to see an advisory committee made up of our association, the other association and also members here.

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Going to Mr. Lefevre, about fees, that is another thing I would like to mention. Clause 6(1)(d) says, "prescribing fees payable to the association." What fees? How much would the fees be? Once they have control of it, it could go up to \$500 or \$600; no limit.

Mr. Chairman: I am hoping we are going to get through this quickly, because we have to deal with a rebuttal or commentary or whatever, which the driving school is going to deal with. We have started to repeat issues and I would rather not do that. Mr. Smith had a question.

Mr. Smith: It could be a question in the end. I wanted to make a couple of comments, though. I will try to be as short as I can. Does the insurance industry recognize both groups, the two groups represented here today? I think if you take the driver education course, you are given something like three years' experience towards your insurance premiums. Are both groups are recognized by the insurance industry? That would be one question.

I cannot remember your name, sir, but you made the comment about human rights. I am certainly not going to deal in that field, but this bill has gone before two ministries, the Ministry of the Attorney General and the Ministry of Consumer and Commercial Relations. I think they would likely pick up if there were some human rights problems or objections.

I am trying to get things clear in my mind, because I realize we have a certain difference of opinion here. I am trying to be as fair as I can if I have to decide on it. Mr. Andrunyk said other professional groups do not have a governing body. I can think of the lawyers, who have the bar association, which more or less regulates its members; the doctors have an association which regulates them and can take their licences away, for instance. I am just trying to ask questions. I am not trying to be provocative but just trying to bring more things out and put them on the record. I believe the accountants have two bodies: one is the Certified General Accountants' Association and the other one is the Institute of Chartered Accountants.

I do not know which group I really support. I know the one is new. You are more senior, I guess, from what I hear. If you want to make some comments on that, I would appreciate hearing your answer.

Mr. Chairman: Again, if I can caution people that we not cover the same ground again, if at all possible.

Mr. Andrunyk: I would like to make comments on two points. First, on the insurance question, all members of DSAO do not qualify for insurance benefits. The Ontario Safety League is an agent for the Insurance Bureau of Canada, and only schools we approve, which meet the same standards as the high school education program, will get insurance benefits. That is speaking about DSAO; I do not know about CPDEA.

The second point I would like to make is that when we talk about governing bodies, you must understand that chartered accountants and doctors and so on have a governing body within their own profession. They are not governed by some other group. If you took the 4,000-odd driving instructors and master instructors and formed a group, they would have a governing body which would decide which qualifications to have and which training, not by a group of owners who immediately have a conflict of interest.

Can you imagine if 4,000 instructors had voting powers in DSAO and took over the whole organization? The driving school owners would have no say in it. The instructors could say, "You give us \$50 an hour or we don't work for you." They would never permit it to happen, and I do not blame them. We have to be careful when we look at what we regulate and what we self-regulate.

Mr. Burger: To answer Mr. Smith's question, we issued certificates before the Ontario Safety League was called upon to approve driving schools. Therefore, all major insurance companies have granted thousands of our students insurance reductions. It states on our certificate exactly what the president of the Ontario Safety League mentioned just now: that the standards required are the same standards as the Ontario government laid out for the high school program. I have been involved now for over 25 years in high school programs.

Mr. Sola: I just want to make a comment. I am half an hour late for another commitment so I would like to get this over with if we can. I do not want to abrogate my responsibility on voting, but I do not want to see this prolonged too long. So could we get the question in and the rebuttal and then get to the vote please?

Mr. Chairman: I am very mindful of that. I appreciate your comment.

Mr. McCague: How is highway safety going to suffer if we approve this bill?



Mr. Burger: Is that question directed to me?

Mr. McCague: Do you not want to answer it?

Mr. Burger: Oh, yes. as a member of a neutral body, I am quite happy to answer it. I think highway safety, if this bill is passed or not passed, will have no bearing whatever because the DSAO is now a recognized association of driving schools. It has its own standards for driving schools.

It does not make any difference whether this bill is passed or not. It will still continue because I think DSAO is a very reputable, responsible body which will continue providing good driver education. The only thing it will not have is the power to regulate its instructors.

Mr. Burger: Mr. Andrunyk just said it will not save one single life on our roads. In other words it will continue, except I make the point one more time, if I may, that all this association would be able to do is advertise, "We are approved and registered by the Ontario government," and this is what we will fight.

Mr. McCague: How will the secondary school program be affected?

Mr. Lefevre: It probably will not affect the secondary school program at all in the sense that they are not going to be doing anything in secondary schools. That is still governed by the Ministry of Education and the school boards. However, if we are looking at the overall driver education industry, then they can set their own standards. Their standards may be lower than the secondary school or they may be higher, but they will have the right to set them and that can be dangerous because they could allow driving schools to give out certificates, advertise as if they were provincial driver education programs and confuse the public.

Consequently, the school board's program could go down because they will offer it at different times, they will offer different prices and they will offer crash courses. There is a whole gamut of things that could add to the confusion. Therefore, students could take their courses instead of the courses in the high schools. Consequently, if their requirements are less, the kids could suffer.

Mr. Chairman: Thank you very much. That being the case, perhaps we could have the proponents come back so that they may address the issues raised recently. Although you may choose to re-emphasize some points from your original presentation, you do not have to.

Mr. Kennaley: I am going to be very brief. What time do you want to adjourn?

Mr. Chairman: I want to give you an opportunity to get finished. I suppose our ultimate limit is about 1:25, but I am sure we would like to be out well before then.

Mr. Kennaley: I can guarantee it, unless you have something else after us.

Mr. Chairman: No. You are the finale.

Mr. Kennaley: I want to start by clarifying one point. I am going to ask Mr. Lloyd to speak briefly on the licensing of the instructors.

Mr. Lloyd: Currently, what happens is that to become licensed, instructors have to take a four-week course. The four-week course must be run through a community college or through the OSL under the direction of a chief instructor or a master instructor. Currently, we have three levels of instructors in this province: driving instructor, chief instructor and master instructor.

We have heard several people mention that they are senior instructors. Currently in the legislation, there is nothing to indicate that level. That is one of the things that is in the bill.

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Mr. Burger mentioned that they pioneered the community college courses. That was pioneered by the Ministry of Transportation in 1980 when it brought about the designation of chief instructor. That was so that we could train our own instructors to run the programs through the community colleges and it did not take away from the Ontario Safety League.

They mentioned that they do not want to undergo retesting in any way. Unfortunately, they may have no choice because, in our meetings with the Ministry of Transportation, that is one of the things the ministry is really high on, the retest of all instructors, either by their mechanism or by one that is put in by some other organization. Currently, the only people they have been talking to on that is the Chief Instructors' Association. We have given a letter to the DSAO some time ago that we fully support its move for this bill. As the representative of CIA, Bill has that letter, if you would like to see that.

The reason they brought about the designation of chief instructor was the fact that the master instructors were no longer doing the training. It was all being done through the OSL and they felt they wanted to open it up to other areas of the province. That was why they went through the community college system.

Mr. Andrunyk mentioned there were some 75 master instructors. Mr. Burger mentioned that there were about 30 chief instructors and he would be very pleased to hear that there were seven of us still active. I would be pleased to hear that there were seven of the 75 masters who were still active. It is not the case.

As far as Mr. Burger not being invited to any of these meetings is concerned, Mr. Svensson and Mr. Burger have had several meetings on this issue. Mr. Svensson has also met with Mr. Andrunyk at the Ontario Safety League and they have been with Mr. Fulton and many of his representatives over the years.

They talked about costs going up. Costs will have to go up for membership fees for the organization because, if we are going to be monitoring this system, it is going to cost money. The fees will have to go up in order to do that, so that we can monitor it without costing the government any money.

I would like to address one other item. Mr. Lefevre said he questions the educational level of some of these people. I would like to mention my own educational level, if that bothers him any. I currently have five degrees. I am working on a PhD in education. I currently have all but the dissertation. I have finished all the courses. There are several other people involved in driver education who have degrees, many of them. So, if he is concerned about their educational level, I think we can allay that particular fear.



Mr. Kennaley: Just a couple of other brief points, Mr. Chairman: I am not going to reply to the new letter that you have here from Safe Drivers of Canada Ltd. There are several errors of fact in the letter, at least points 1, 2, 3, 4 and 9 for sure, and maybe others. I am not going to reply to that at all.

I want to reply briefly to Mr. Andrunyk. Mr. Andrunyk states the position of the Ontario Safety League. His position seems to change from time to time on it--at least, not his personally, perhaps, but the Ontario Safety League's. In a letter to Mr. Svensson on February 9, 1987, Mr. Andrunyk points out in one place that, "obviously, the Driving School Association of Ontario appears to have the mechanism and the support of the majority of driving school proprietors to assume the regulating function, but the final decision must rest with the government of Ontario." I guess that is, more pointedly, the Legislature, and, of course, we agree with that.

The DSAO has no problem with the activities and the interests that are expressed by Mr. Burger and his group. I think they are probably to be complimented on it. I am not going to cast any aspersions on their motives for being here. I do not think there is any point to that. I simply want to point out that this bill did not materialize out of thin air. I have been involved in practically all of the discussions with officials from the Ministry of Transportation and Communications, both prior to the present government taking office and since then. I have been involved in discussions with the Ministry of Consumer and Commercial Relations and have had a very good working relationship with the legislative counsel, as I pointed out earlier.

The bill has had a lot of discussion. I am not privy to what went on between Mr. Svensson and the other organizations, except what I have read into the record here. This bill does not give any rights to anybody except the rights which are specifically set out in the bill. It speaks not of regulating the driving school industry, but it speaks to regulating its members. DSAO is a voluntarily entered organization. People can come and go as they please. There are criteria now; there will be criteria. Some of the work has been done. The association has a set of bylaws, which of course will have to be amended to conform to this legislation.

We have carried out all the wishes of the government which specifically related to having the requirement in subsection 8(1) that membership be contingent upon having a licence which is issued by the ministry under the Highway Traffic Act.

I think, with respect to everybody here, the only really worthwhile action the committee can take on this bill is to report it pretty well the way it is, and I trust that is what will happen.

Mr. McCague: We have heard a lot on this bill. I guess we have passed 20 others while we were thinking about this one. I would like to congratulate the people here for presenting this bill to us and for their interest in safety. I am not at all impressed by the methods that were used by the other group, the Canadian Professional Driver Education Association, to try to persuade us--and it did not have much effect--that you should not have your bill passed.

I am impressed by the testimony given by the Ontario Safety League, but in view of the havoc that I think this bill will wreak in the community, I would ask that your group continue to pursue this matter. You might offer Mr. Burger the opportunity to assist you, and if he does not wish to do that, get it in writing.

I do not think this committee has any alternative, in view of the comments of the Ministry of Transportation, but to not pass it at this time, and I so move.

Mr. Smith: Mr. Chairman, in light of what Mr. McCague has said, would it be wise to defeat this bill or would it be wise to let them have their chance to talk this out, and maybe let the committee talk it out on another occasion? I understand people want to leave. Would it be wise to defer it? I ask for your judgement. I am in a little bit of a quandry myself here.

Mr. Chairman: This bill has had dramatically more time spent on it on two occasions than anything else we have had since the election. My sense is that today we repeated a large number of arguments we heard the first time, and during the course of today we have repeated arguments we heard earlier in the day. I suspect that the comments of Mr. McCague are well taken, and that is why he put the motion.

My suggestion would be that we vote on the motion. If the motion carried, the bill would be defeated in this place. I would then require another motion to not report the bill. That is the formality required.

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Mrs. Fawcett: Do you see a real problem in getting together with the other group to come to a consensus? Really, I feel you are both ultimately after the same thing; that is, the best interests of the people you are trying to serve. Is there a possibility that you can work on this further to satisfy all the driving associations?

Mr. Kennaley: I can speak only for this group. I would have to say yes to that. I cannot, of course, predict what the success of the discussions would be, since they seem to have failed in the past.

Mrs. Fawcett: But you would certainly be in agreement?

Mr. Kennaley: I do not see why not.

Mr. McCague: Just to clarify the point raised by Mr. Smith, you have heard my motion, but for clarification I would say DSAO is quite welcome to come back here again. I put in a couple of qualifiers, but my motion really is to not pass this bill.

Mr. Chairman: I think everybody is clear on the motion.

All in favour of the motion? Opposed? One opposed.

Motion agreed to.

Mr. Chairman: Mr. Sola moves that this bill not be reported.

All in favour? Opposed? Mr. Ruprecht, again, in opposition.

Motion agreed to.

Mr. Chairman: Thank you very much. I might add, by way of comment and, hopefully, assistance to all the parties, that I think all the members of this committee appreciate very much the efforts that were made and appreciate some of the conflicting views. We would certainly encourage you all to get



together again, however difficult it has been in the past. I do not know that the opposition which has come out today is in any way insurmountable. I would think it may well be possible to reconcile the differences. I would like to thank you all for the submissions you made.

To members of the committee, I have a couple of quick housekeeping matters. First, I will make a report back on today's proceedings whenever I have an opportunity, given petitions.

Second, there is a proposed agenda for the next few weeks. I want to formally report to you as to the outcome of discussions I have been having on an almost daily basis on getting extra sitting time for this committee to deal with regulations. At this point, I do not have any extra time and I am seeking once again to get time for the afternoon of April 27. Mr. Philip has some difficulty in dealing with regulations on the morning of April 27 because he has a conflict with one of the other committees, but I do not have a better solution at this time. The request for extra time has repeatedly gone in to the House leaders and whips.

Mr. McCague: On that point, Mr. Philip spoke to me about that and wondered if we would agree, if you agreed, to sit on Wednesday afternoon, April 27, rather than in the morning.

Mr. Chairman: I personally am agreeable. I can only tell you that I cannot guarantee the House leaders will be, since at least two or three formal requests and many informal requests have not worked.

Mr. McCague: On that, you have the New Democratic Party agreement, as I understand it, and you have the Progressive Conservative agreement, so you can work it from there.

Mr. Chairman: I thought I had that last time and it somehow did not work. I appreciate your comment. I am quite willing to do it. I think that is agreeable to other members of the committee.

Mr. Pollock: I have the same problem as Mr. Philip.

Mr. Chairman: I take it that it will be at my discretion basically, but we will be trying to get it scheduled for the afternoon instead of the morning.

The outline for May 4 and May 11, and presumably also May 18, is acceptable to the committee. We would deal with private bills on those days. We will deal with the regulations report later in May and in June.

Mr. Smith: There is only one afternoon sitting?

Mr. Chairman: That will be April 27, assuming we get formal concurrence from the House.

The committee adjourned at 12:47 p.m.

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T-18

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

KINGSWAY GENERAL INSURANCE COMPANY ACT  
LEBON GOLD MINES LIMITED ACT  
MACHIN MINES LIMITED ACT  
PROW YELLOWKNIFE GOLD MINES LTD. ACT  
HAMILTON CIVIC HOSPITALS ACT  
GENERAL HOSPITAL OF PORT ARTHUR ACT

WEDNESDAY, MAY 4, 1988



STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

CHAIRMAN: Fleet, David (High Park-Swansea L)

VICE-CHAIRMAN: Beer, Charles (York North L)

Cleary, John C. (Cornwall L)

Fawcett, Joan M. (Northumberland L)

McCague, George R. (Simcoe West PC)

Pollock, Jim (Hastings-Peterborough PC)

Pouliot, Gilles (Lake Nipigon NDP)

Ruprecht, Tony (Parkdale L)

Smith, David W. (Lambton L)

Sola, John (Mississauga East L)

Swart, Mel (Welland-Thorold NDP)

Substitutions:

Ballinger, William G. (Durham-York L) for Mr. Beer

Callahan, Robert V. (Brampton South L) for Mrs. Fawcett

Mahoney, Steven W. (Mississauga West L) for Mr. Fleet

Also taking part:

Collins, Shirley (Wentworth East L)

Cousens, W. Donald (Markham PC)

Kanter, Ron (St. Andrew-St. Patrick L)

Kozyra, Taras B. (Port Arthur L)

Clerk: Manikel, Tannis

Staff:

Mifsud, Lucinda, Legislative Counsel

Witnesses:

From the Ministry of Consumer and Commercial Relations:

Haggerty, Ray, Parliamentary Assistant to the Minister of Consumer and Commercial Relations (Niagara South L)

From the Ministry of Municipal Affairs:

Neumann, David E., Parliamentary Assistant to the Minister of Municipal Affairs (Brantford L)

Chipman, John G., General Counsel, Municipal Affairs

From Kingsway General Insurance Co.:

Thompson, Murray A., Legal Counsel; with Blaney, McMurtry, Stapells

Algie, R. Clive, Legal Counsel; with Weldon, Sproule

Wengle, Harvey H., Legal Counsel; with Wengle Associates

From Casino Gold Resources Inc.:

Rapski, John P., Director

Boyle, James, Legal Counsel; representing shareholders of Machin Mines Ltd.

From Prow Yellowknife Gold Mines Ltd.:

Galle, Henri, President

From Hamilton Civic Hospitals:

Cranfield, Earl R., Legal Counsel; with Evans, Husband

From the General Hospital of Port Arthur:

McKittrick, Allan G., Legal Counsel; with McKittrick, Jones, Kislock

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Wednesday, May 4, 1988

The committee met at 10:14 a.m. in committee room 2.

The Acting Chairman (Mr. Sola): I will recognize a quorum, and without further delay we can get started. Our first bill is Bill Pr25, An Act respecting Kingsway General Insurance Company. The sponsor is Don Cousens, and we have here Mr. Thompson and Mr. Star.

I am afraid you will have to do with a pinch-hitter. Our normal chairman is away on more pleasant duties—he is on his honeymoon—and our vice-chairman has another committee to chair, so you have to do with a pinch-hitter for both chairmen. If you would proceed, sir.

Mr. Cousens: Mr. Chairman, we are delighted that even you are here.

Mr. Mahoney: Do you want to rephrase that?

Mr. Cousens: I will rephrase it. It is a pleasure that you are in the chair, sir.

KINGSWAY GENERAL INSURANCE COMPANY ACT

Consideration of Bill Pr25, An Act respecting Kingsway General Insurance Company.

Mr. Cousens: I am pleased that we have this bill before you. It is a straightforward bill that would allow Kingsway General Insurance Co. to have national status. That is really the substance of Bill Pr25. If there is any further information required, I know the solicitor, Murray Thompson, who is well known to this committee, or Mr. Star will be pleased to answer any questions.

The Acting Chairman: We may as well throw the ball into Mr. Haggerty's court.

Mr. Haggerty: The Ministry of Consumer and Commercial Relations has no objections to Bill Pr25. In other words, there are no comments.

The Acting Chairman: Thank you.

Mr. McCague: Did we approve one like this in recent weeks?

Mr. Thompson: Yes, York Fire.

Mr. McCague: Same thing?

Mr. Thompson: Yes, it was. That was about six months ago. No, not quite that long. Four months ago.

Mr. McCague: I suggest you proceed with the approval of the bill then, Mr. Chairman.

Sections 1 to 5, inclusive, agreed to.



Preamble agreed to.

Title agreed to.

Bill ordered to be reported.

The Acting Chairman: You are a very convincing person, Mr. Cousens.

Mr. Cousens: Thank you very much. It is a pleasure to have you in the chair.

The Acting Chairman: I guess we will proceed to Bill Pr49.

#### LEBON GOLD MINES LIMITED ACT

Consideration of Bill Pr49, An Act to revive Lebon Gold Mines Limited.

Mr. Kanter: I take it that my role in a private bill such as this, essentially, is to introduce it. I understand there may be some questions of detail as to what might flow from the bill. I take it that it would be the role of the committee to determine whether the bill might be passed and subsequent issues will be determined in other forums. I am going to leave my comments on this bill at that and leave it in the capable hands of the committee to determine a way the bill ought to be passed. If it is necessary to have further interventions, I will be available.

The Acting Chairman: Mr. Kanter, would you introduce the two people with you, please?

Mr. Kanter: The two people I have not met. Is one of you Mr. Algie?

Mr. Algie: Clive Algie, on behalf of the applicants.

Mr. Kanter: And Mr. Wengle. My office has had some discussions with these gentlemen, but I have not had the opportunity to meet them until now.

The Acting Chairman: I guess now I should ask Mr. Haggerty for his comments.

Mr. Haggerty: "Re: application for private bill, Ontario Corporations Tax, Lebon Gold Mines Ltd.

"As required by the Legislative Assembly of Ontario, standing order no. 68, the Minister of Revenue hereby certifies that subject to the subsequent review by the Ministry of Revenue, all taxes estimated to be payable under the Corporations Tax Act, RSO 1980, by Lebon Gold Mines Ltd. have been paid.

"Accordingly, the Minister of Revenue has no objection to the application of the above corporation as petitioned in the private bill to be considered by the private bills committee.

"Yours truly, L. P. Leonard for the Minister of Revenue."

The Acting Chairman: Thank you. Mr. Algie, do you have any comments?

Mr. Algie: I would certainly be prepared to make submissions, very briefly.

The company was dissolved in 1976 for failure to comply with certain

administrative filing provisions of the Securities Act. At the time of its dissolution, the company was the owner of several mining claims and, of course, the purpose of revival is in order that the company and its shareholders may properly realize their assets. The applicants have taken all necessary steps to revive the company, getting the approval of the various ministries, including the Ministry of Natural Resources, the public trustee and the corporations tax branch.

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The applicants, as major shareholders, cannot assert their rights as shareholders without the revival of the company. Again, it was an administrative slip. The director who received all notices passed away in 1977, and this did not come to the attention of the major shareholders until some time in 1980.

Again, I ask that the committee favourably consider the revival of this company.

The Acting Chairman: Thank you, sir. Mr. Wengle, do you have any comments?

Mr. Wengle: Yes. I am objecting to the revival of this company on behalf of a man whose name is John Edward Perron. Mr. Perron is the current owner of some claims in the district of Timiskaming. Mr. Perron's father was the previous registered owner and his grandfather was the owner as of July 1937, so it is over 50 years that this family has owned these claims.

There was at one time an agreement to sell these claims to Lebon Gold Mines Ltd. Nobody knows what happened as far as that claim is concerned, but a caution was registered against my client's grandfather's property at that time. Nothing happened; no proceedings were taken pursuant to the caution. Eventually that caution expired, and we later find a caution put on the property by two gentlemen who are the applicants here in fact. Those gentlemen are James Kennedy Winters and Arthur Lloyd Jackson. They registered a caution which subsequently expired also and after that they registered another caution.

I think members of the committee have before them submissions which are made on behalf of Mr. Perron, my client. If you would turn to schedule 4, which is an affidavit in support of application to register caution, that affidavit is sworn by James Kennedy Winters and Arthur Lloyd Jackson, who are the applicants for revival of Lebon.

If you look at the final paragraph of their affidavit, they swear, "That the cautioners are the recipients of all the assets and interests of Lebon Gold Mines Ltd., including the above-mentioned parcels of land, the same having been released to the cautioners by the officers of Lebon Gold Mines Ltd.," and the names of the officers then follow. It is my submission that if the company has no assets and no interests, there is no possible reason for reviving this company, except a reason that I submit is not a bona fide reason.

In the course of this matter, my client, wanting to deal with this property, had to deal first with the caution that was registered. He brought an action in the Supreme Court of Ontario for the removal of the caution and for a declaration that he was the owner of the lands in question. That matter was dealt with eventually by the Honourable Mr. Justice Steele, and I must apologize: The judgement of the Honourable Mr. Justice Steele should have been schedule 5 to the submissions that I put before the committee. I have given Ms. Manikel copies for the committee and I hope you now have it before you.



In that judgement, the court orders that the caution be removed and declares and adjudges that my client is the sole and rightful owner of these lands. That action was defended by my friend's firm at that time, on behalf of Messrs. Winters and Jackson. They lost that. They appealed and subsequently they abandoned their appeal. I have also given Ms. Manikel the notice that was delivered to us abandoning the appeal.

The next step for them was to apply to revive Lebon Gold Mines Ltd. I submit that the only purpose of that is to recommence a legal proceeding, commenced this time by Lebon, claiming ownership of property that Mr. Winters and Mr. Jackson swore did not belong to Lebon but belonged to them. Now, that can result, I submit, and will result in considerable prejudice to my client. If that is permitted and an action is commenced against my client for the ownership of this property, he will again be involved in lengthy and expensive litigation, and his property will again be tied up. He will not be able to deal with it.

In effect, what I am saying is that this is not a bona fide application. The applicants are attempting to do indirectly what they could not do directly. They have sworn under oath that they own all the assets and all the interests of Lebon Gold Mines Ltd. I respectfully submit that there is no reason for reviving Lebon and that it will severely prejudice the current registered owner of this property, my client, if this company is revived.

Basically, unless the committee or the chairman has any questions, those are my submissions.

Mr. Mahoney: Just a question: I got lost in the family tree somewhere and I wonder if you can tell me. Was Mr. Perron the original owner?

Mr. Wengle: I suppose the original owner was the crown and, maybe before that, the Indians.

Mr. Mahoney: In relationship to this case.

Mr. Wengle: On July 3, 1937, A. J. Perron, who is the grandfather of the current registered owner, was the owner. He became the owner. Then, 18 years later, there was this agreement. We do not know what happened to that agreement, but a caution was registered by Lebon.

Mr. Mahoney: Where do Winters and Jackson come in? They bought it from Perron for \$30,000?

Mr. Wengle: No. Winters and Jackson come into the picture, as I understand it from my involvement in this action in the Supreme Court of Ontario, in some way, I believe, if my recollection is correct—my friend perhaps can help—Winters and Jackson did some legal work for Lebon and, apparently, were owed some money by Lebon, and Lebon in payment transferred all its assets and interests to Messrs. Winters and Jackson. That is the explanation that was offered to the court.

Mr. Algie: Excuse me. With respect, my understanding is that Winters and Jackson became shareholders of Lebon in the mid-1950s.

Mr. Mahoney: The agreement, schedule 4, shows that Lebon purchased the land from Perron for \$30,000. This affidavit says, "which amount was fully paid."

Mr. Wengle: There is no evidence of that.

Mr. Mahoney: I am reading from your affidavit or your schedule 4.

Mr. Wengle: Schedule 4 is an affidavit put in by Messrs. Winters and Jackson. That was dealt with by the court. That was an affidavit on an application to register a caution which was subsequently removed by the Supreme Court of Ontario, which held that not Messrs. Winters and Jackson but Mr. Perron was the owner.

Mr. Mahoney: OK. Thank you very much, Mr. Chairman.

Mr. Algie: If I may make just a couple of comments in response to my friend's argument with respect to prejudice, I respectfully submit that there are ongoing disputes with respect certainly to the assets of this company. As I mentioned at the outset, there are several mining claims that the company owned at the time of dissolution. This particular dispute deals with only three or four of them, I believe.

In addition, the question of ownership, I submit, should not be determined on the basis of a single paragraph affidavit that states the directors personally transferred all of the assets of a company. I would be reluctant to express a legal opinion on whether the directors of a company can transfer assets to third parties and, again, I respectfully submit that this matter should be determined after a full hearing.

In the event that the shareholders in the company are going to pursue the matter of title to the subject property, I submit it should be determined in the Supreme Court between the two competing owners, if you will, of the property.

The Acting Chairman: Did you have questions? I wonder if we could get a legal opinion on whether reinstating the company would prejudice the ownership case.

Ms. Mifsud: I could not give a legal opinion whether it would prejudice. Obviously, if they do not get it revived, they cannot bring a court case at all, so this is a means to facilitate their getting into court and to have their case presented before the judge. Are these the only assets?

Mr. Algie: To my knowledge, several mining claims and that is it. That is the land and the assets on the land.

Ms. Mifsud: If the opponent's property were not involved, would you still have other assets?

Mr. Algie: I believe so.

Ms. Mifsud: In that case, they have no way to deal with their other assets either. I presume the public trustee could help them in some way, but I would not dare to speak on the public trustee's behalf.

Mr. Wengle: How do applicants come before this committee, say, on the one hand, having sworn that they own all the assets and interests of this company and then say the company has assets—the same people?

I submit it is not bona fide. There is nothing before the committee to say either that Messrs. Winters and Jackson are shareholders or that this company owns anything. All there is is the sworn statement of these two



applicants that they, and not the company, own all the assets that were formally owned by Lebon. It is like sucking and whistling at the same time. I submit it just—

Mr. Ballinger: We call that blowing.

Mr. Mahoney: We do it a lot.

Mr. Wengle: I have tried it unsuccessfully.

It just smacks of doing something that you have already had. They had one bite at the cherry and now they want another one.

It is dealt with in the courts. The court found my client to be the rightful owner. They say there are other assets. I do not know what those are, or if there are any other assets. But even if there are other assets, these people have sworn it belongs to them and not the company.

Now they want to turn history around and say: "No, we are not the owners. The company owns these," so that the company then can bring a lengthy action which will involve my client in horrendous expense, which is one item of prejudice, and then tie up this property possibly for years.

The Acting Chairman: Mr. Mahoney, do you have a further question?

Mr. Mahoney: Just to follow along the lines there, could Winters and Jackson revive their appeal that they abandoned on June 2, 1986? Could they not simply revive the appeal to the Supreme Court decision as individuals, if they chose to do so?

Mr. Wengle: I am loathe to give that kind of advice, but I suggest that they could not. They had an opportunity. They did launch an appeal. The appeal period went on for some months and then I was served with this notice that they were abandoning the appeal and, coincidentally, they had commenced this application to revive. So they must have decided—

Mr. Mahoney: Your contention is that they are not going to proceed as Winters and Jackson, but they want to come back at your client as Lebon.

Mr. Wengle: That is exactly it. That is right on.

Mr. Mahoney: Do you have a response to that?

Mr. Algie: My response to that is that Winters and Jackson tried, personally, quite frankly, to avoid the question of a company being out there.

Mr. Mahoney: Why?

Mr. Algie: Because there were assets there and because they realized what the time and expense to revive the company would be and worried that something might happen to the land in the interim, prior to getting this corporation revived. As it turns out, there is, unquestionably, evidence that the company had an interest, and the shareholders personally cannot do anything about it without the shell of a corporation, which, of course, is why we are here today. Without this shell of a corporation, they cannot assert their rights or the rights of the other shareholders in the company.

Mr. Mahoney: Your clients, I assume, are Lebon, and not Winters and Jackson.

Mr. Algie: At the moment there is no Lebon, so our clients are Winters and Jackson who are representing the company. Once there is a company, then the client will be Lebon.

Mr. Mahoney: Why did Winters and Jackson abandon their appeal in the first place, if they felt they had a claim as shareholders in the company? Do they agree with the Supreme Court of Ontario decision?

Mr. Algie: They agree and are certainly bound by a decision saying that, as between Perron and Winters and Jackson personally, Perron must have a paramount interest. But no one has resolved or even discussed the issue in the judicial forum of, as between the company, Lebon, and Perron, who is the proper owner? Winters and Jackson, having heard the decision of the court saying, "Look, you are a shareholder; it is the company, if anyone, that can assert this claim," have no alternative but to try to revive the company and bring the assets of the company, whatever they may be, back within the company itself.

One other point. My friend submits there are serious prejudices that can result. Court costs are always available. Any landowner is subject to potential claims, and if there is an action and if it is found to be frivolous or vexatious, costs will be awarded.

Mr. Mahoney: Quite clearly, the reason you want the company revived is so you can embark upon another trip to the Supreme Court with Lebon taking the place of Winters and Jackson.

Mr. Algie: With Lebon asserting its rights now. Again, I point out that Winters and Jackson are not the only shareholders. There are a number of other shareholders, but, yes.

Mr. Mahoney: The purpose is so you can commence legal action to attempt to claim what you are asserting is the legal and rightful asset of Lebon, which is this property of which the Supreme Court has declared on September 17, 1985, the sole and rightful owner is Perron.

Mr. Algie: Again, I point out that that was a judgement as against these two individuals personally. Without the opportunity of the company to assert its rights, the issue cannot be resolved. We are simply asking for the opportunity to assert the company's rights.

Mr. McCague: I think the question that is before us is whether or not this company should be revived. That is what the bill says. While there has been evidence introduced as to why we should not agree to this, it seems to me we are being asked to adjudicate, through the evidence that was given and not through the bill, what is a legal matter. I am not a lawyer, but I think that in many of these that we are asked to revive, and we normally do revive them, lots of people could bring lots of charges against whoever wanted to revive a company—drunk driving or anything—and make a case that this person is not responsible or he is trying to do something with an ulterior motive.



I think we should address ourselves to what is before us, rather than what has been introduced as reasons there might be a legal case down the road, or whatever. Therefore, I would move that you proceed with approval of this bill.

The Acting Chairman: Thank you.

Mr. Mahoney: Just to respond to that, I do not agree with the motion. I would suggest that the line of questioning I was pursuing with both gentlemen was to determine what the reason for approving the bill is. While I quite agree that our bottom-line decision here this morning is not to get involved in the Supreme Court decision and the propriety of the decision, or any of that, our decision has to be based on whether there is a bona fide reason to revive this company.

Frankly, with the evidence in front of me, and I am not a lawyer either and presumably am not making this decision as a lawyer but as a member of this committee, I am not in support of the bill.

The Acting Chairman: I think the motion before us is to proceed with the bill and then with the vote you can voice your opposition to the matter.

Mr. McCague: You do not have to put your hand up now.

Mr. Wengle: I wonder if I could address the point of whether it is legal. I am not asking that this bill be rejected on the basis of the judgement, necessarily, but on the basis of the bona fides of the applicants, who do not come before you as shareholders. There is nothing before you to say they are shareholders. What there is before you is that the applicants have their sworn affidavit that they are the owners. Now they say, "Revive the company." What for? The company has nothing.

Mr. Mahoney: On a point of order, Mr. Chairman: With respect, we are rehashing the arguments. I think we were at the point of a vote and should take it.

The Acting Chairman: OK. In view of everything that has been heard, we have a motion to proceed with the bill. I ask the committee now, shall sections 1 to 3, inclusive, carry? Can we have a hand vote, please? All in favour?. One. All against? Four.

Section 1 to 3, inclusive, negatived.

Mr. Mahoney: I guess that takes care of the rest of it.

Clerk of the Committee: You still have to say, "Shall I report the bill to the House?"

The Acting Chairman: Shall I report the bill to the House?

Mr. Mahoney: I am not sure of the procedure here. The answer to that should be no, I guess.

The Acting Chairman: Right. I just tried to get it from the floor. I guess that takes care of Bill Pr49 and I am sorry to say, we are now finished— Let me see, where is the next one? Now we are proceeding to Bill Pr34.

MACHIN MINES LIMITED ACT

Consideration of Bill Pr34, An Act to revive Machin Mines Limited.

Mr. Kanter: As the sponsor, I guess I will introduce that. Bill Pr34 is An Act to revive Machin Mines Limited. There is an awful lot of gold mines in the riding of St. Andrew-St. Patrick where I live.

There are several people before the committee to speak to this, I believe, Mr. Rapski, the applicant, described as a director of Casino Gold Resources Inc., and another gentleman, James Boyle, who, I am not sure, perhaps might best describe himself as an interested party.

Mr. Boyle: We represent shareholders or former shareholders of the dissolved corporation.

Mr. Kanter: Shareholders of the dissolved corporation.

Mr. Boyle: Machin Mines.

The Acting Chairman: Thank you, sir. Do you have any comments, Mr. Haggerty?

Mr. Haggerty: I have from the Ministry of Revenue. The comments are as follows:

"In reply to your memorandum of May 13, 1987, I have been advised by the corporations tax branch that the above corporations have complied with all its requirements. This ministry, therefore, has no objection to the revival of these corporations."

The Acting Chairman: Any questions from the floor? We shall proceed. Shall sections 1 to 3, inclusive, carry?

Mr. McCague: Yes.

Mr. Kanter: Mr. Chairman, perhaps we might ask the applicant and the intervener for any comments they might have.

The Acting Chairman: OK. Let us reverse ourselves.

Mr. Rapski: I am John Rapski. I represent the president of Machin Mines Ltd. It is a private corporation in the province of Ontario. The reason for activating the corporation and reviving the corporation is that I have purchased a property from the corporation, and revival of the corporation will clarify the title to the property.

The Acting Chairman: Thank you, sir. Go ahead, Mr. Callahan.

Mr. Callahan: Can I enquire if there was any circulation made to the public trustee? As you know, when a charter ceases to exist, the property then is vested in the public trustee.

Mr. Rapski: I approached the public trustee. The public trustee, under the Escheats Act—I forget which section—specifically cannot deal with mining lands.



Mr. Callahan: I would like to ask through you, Mr. Chairman, or legislative counsel, is there a different situation in a mining company as opposed to a normal, run-of-the-mill company in terms of property vested in the public trustee upon the dissolution of a corporation?

Ms. Mifsud: No. All the assets of any corporation that is dissolved are vested in the public trustee—

Mr. Callahan: That is what I thought.

Ms. Mifsud: —and we always give notice to the public trustee of any bill reviving a corporation.

Mr. Callahan: We have had no response from the public trustee.

Interjections.

Mr. Callahan: Well, the public trustee may not wish to revest the property; I do not know. Not knowing—

The Acting Chairman: Sir, do you have any comments?

Mr. Boyle: I will reserve my comments for the completion of Mr. Rapski's comments. We represent the shareholders of the company that is being revived, and we have several comments with respect to the wording of the bill itself and certain of the representations that Mr. Rapski is making. I would like wait to hear what Mr. Rapski says before I make those representations.

Mr. Kanter: Perhaps if I could ask a question of Mr. Boyle, that might help clarify things. I take it, Mr. Boyle, from previous discussions that your main concern is not with the body of the bill, the actual revival, but rather with a statement, I believe, in the preamble that the applicant represents a former director of the corporation. Is that correct?

Mr. Boyle: That is correct. We represent the shareholders of the company, and the company was, to my understanding, dissolved in 1979, at which time the corporate records indicate that the individual who Mr. Rapski has informed us is the president and director of the corporation, and whom he represents, was not at that time the director or president of the company.

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Mr. Rapski's representation is that, subsequent to the dissolution of the company, apparently an Arthur Bayne was appointed president and elected a director of the company which was dissolved. Now, under corporations law, that is not possible. Our anticipation is that upon the revival of the company, there will be some dispute with respect to the property which Mr. Rapski claims was sold to him subsequent to the dissolution. I think a fact that should be before the committee is that the alleged transfer of property from Machin Mines to Mr. Rapski occurred subsequent to the dissolution. There is some question as to the validity of that.

The shareholders of Machin Mines at the time of the dissolution, of course, have an interest, therefore, in this property and in seeing that—how can I put it? If it was the property of the company at the time of the dissolution, it either escheated to the crown and, therefore, upon revival, returns to being property of the company, or—well, there is no "or." If it is escheated to the crown, it returns to the company upon the revival. There

likely will be litigation between the shareholders of Machin Mines and Mr. Rapski with respect to the transfer of this property.

Mr. Callahan: If the corporation is not revived, then nobody can sue, I gather?

Mr. Boyle: That seems to be a pretty fair assessment of the situation.

Mr. Callahan: So I gather the shareholders do not have any objection to the revival?

Mr. Boyle: No, the shareholders have no objection at all to the revival. But what we have an objection to is the statement in the preamble of the bill that states that Mr. Rapski represents a former director of the corporation. We are concerned that, in the event that litigation is initiated under the Corporations Act through the derivative action or oppression remedies provisions of the Corporations Act, that litigation on behalf of the shareholders might be prejudiced by a bill passed in the legislation which makes it a current statement of fact which will be in dispute at the time before the courts.

Mr. Callahan: Are you authorized by the shareholders to bring this application so that we can change the preamble?

Mr. Rapski: I would like to respond to his allegation that I do not represent the president. This document submitted to the companies branch on March 28, 1988, indicates that Mr. Arthur Bayne is the president of Machin Mines as of June 7, 1976. This document was signed by me. It was approved at a board meeting of Olympia Mines and Machin Mines held on March 8.

These gentlemen are objecting to a document that is filed with the government.

Mr. Boyle: I wonder if we could table that document here today, appearing in note that it is dated March 22, 1988.

Mr. Callahan: Perhaps we could have copies of that.

Mr. Boyle: Date of receipt was March 22, 1988.

Mr. Callahan: Obviously, that is an issue that will be resolved in litigation. The purpose of the exercise today is to get a body that you can sue. Why does that fact become of such great significance? Why cannot the gentleman representing the shareholders simply be the applicant and we strike that clause and get the same result. It leaves the issue open to be litigated as to whether you are right or you are right.

Mr. Boyle: That is my representation here today, that the preamble should be as neutral as possible in view of the potential litigation. Having the preamble make a representation which will be a question of fact before the courts is improper.

Mr. Callahan: I gather that the intent of both of you gentlemen is to get the corporation revived.

Mr. Rapski: Yes.



Mr. Boyle: That is correct.

Mr. Rapski: No litigation can start until the corporation is revived.

Mr. Callahan: Right. I know. But that is what I am saying. Why do you not take the easy out and let us strike that clause? This gentleman says he represents the shareholders. We will get on with the approving it, I presume. I cannot speak for everybody, but I would certainly vote for the revival of the corporation under those circumstances. But I do not think we should involve ourselves in any issue that may be involved in the litigation that ensues.

Mr. Smith: Mr. Chairman, is he talking about the clause after 79 semicolon and to the next semicolon? Is that the clause you are referring to?

Mr. Kanter: Yes, that is correct.

Mr. Smith: And that is all you want deleted and everybody is satisfied. Is that right?

Mr. Boyle: Essentially. We would prefer to have Mr. Rapski's name struck from it, but as he is the applicant, I am not sure of the exact procedure, whether that would require reintroduction of a bill or not. We would prefer that Olympia Mines Ltd., the shareholders of the company, be the applicant. But, in fact, that is the offending statement.

The Acting Chairman: Mr. Kanter, any comment to make?

Mr. Kanter: Actually, Mr. Callahan pursued the suggestion I was going to make, which your committee might consider—I am not a member of the committee—striking the clause. It is about seven lines from the bottom of of the preamble beginning, "that the applicant represents a former director of the corporation." You might consider striking that clause from the preamble and then proceeding to consider the bill.

The Acting Chairman: I think counsel is in the process of rewriting the preamble.

Mr. Callahan: I would presume that we could simply have the shareholders take the place of Mr. Rapski. It has come to my attention that the legislative counsel should speak to it as to who then becomes the applicant.

Ms. Mifsud: We have always tried to have an applicant's name there because if somebody has to be authorized, presumably to bring it or to have some interest in the bill, it cannot just be a stranger to the corporation. It has to be someone who has an interest in the bill, preferably more than one, but in this instance it was only one person.

We have always held that it is an abuse of process if there is something in the preamble that is not factually correct. The applicant is totally responsible for what goes in the preamble and if the committee is considering any amendments, it should perhaps only be that the applicant represents a shareholder if that is an issue, but not the name of the applicant, because this is the person who has paid the money, who has engineered the bill through to this stage and has made the representations in the preamble, as Mr. Rapski.

Mr. Boyle: I am sorry, I am not sure that I understood. You are saying that it would not be appropriate to amend the applicant at this point, that Mr. Rapski should stay on as the applicant?

Ms. Mifsud: Mr. Rapski was the applicant. He is the one who set the preamble. He is the one who has made the application. That is an actual fact, so it should not be changed. We need some name as the applicant. It cannot just be in the air.

Mr. Callahan: That does not create a problem because the recital could start off, "Whereas John P. Rapski hereby represents, etc." If we strike out the other, he is still the applicant. We have not interfered with an issue of fact that might be called into litigation. I do not see that as a problem.

Mr. Boyle: I am also concerned with the phrase that follows, the second after that, "the applicant wishes to revive the corporation in order to carry on active business." Perhaps you could clarify for me whether that is a requirement in the preamble in order for the committee to pass the bill.

Mr. Rapski: I am the applicant and I wish to carry on for ever.

Mr. Boyle: I am concerned that that again creates an inference of prejudice to the shareholders of the corporation.

Mr. Kanter: He wishes to remain obviously.

Mr. Callahan: How do you say that that creates prejudice, that he could convey the property before he had a chance to sue?

Mr. Boyle: No, that is not my implication. Actually, I am trying to sterilize the preamble as much as is feasible under the circumstances. Quite frankly, your recommendation, Mr. Callahan, is more than satisfactory from our point of view. We support the revival of the corporation as has been mentioned before.

The Acting Chairman: I think we are getting too much into legal technicalities. We will all have to be lawyers pretty soon to sit on this committee.

Mr. Boyle: I am sorry if I have obscured the matter by bringing that up. I withdraw the comment.

Mr. Ballinger: Mr. Chairman, can I ask a question. As I understand, in both cases there is always a lawyer representing each party. One of the problems I find myself in, sitting here, is this. Did you fellows chat about this before you came in this morning? Are you both in here cold turkey?

Mr. Rapski: Both of us are cold turkey.

Mr. Boyle: I am not sure that your comment that Mr. Rapski is a lawyer is correct? Are you a lawyer, Mr. Rapski?

Mr. Rapski: No, I am a prospector.

Mr. Ballinger: You are probably the smart one then. Sorry, Bob.

We are in an awkward position when we come in. With this there is very little backup. There is a bill. There is a respect from the Ministry of



Revenue that says that the taxes are paid so there are no outstanding liens. We sit and listen to two sides tell their side of the story about the preamble in the bill.

Mr. Smith: We are in an awkward position as politicians.

Mr. Ballinger: I just find myself in a precarious position as a member of this committee.

The Acting Chairman: I think both sides sides want a private company so that they can have a go at each other in court, but I think it is just how the thing is phrased.

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Mr. Callahan: Can I just advise for future reference? It is only because the practice was established, and I think it is a sound one that was practised earlier, that if there are issues of fact that are to be determined between litigants, we do not get into the position of second-guessing what a court might do. That is an issue between the parties. That is the only reason I have suggested what I have suggested.

Mr. McCague: We just did.

Ms. Mifsud: Yes.

Mr. Mahoney: No, we did not. We made our decision based on the Supreme Court decision that was right before us in front of our eyes.

Mr. McCague: No.

Mr. Mahoney: Are you a lawyer, George?

Mr. McCague: No.

Mr. Mahoney: Well, there you go.

Mr. McCague: We did not make it on that basis.

Mr. Mahoney: Well, that is how I made mine.

Mr. Ballinger: I am sorry, I just want to get this clear in my own mind, especially if we are going to be voting on this one. Who wrote the preamble?

Mr. Rapski: I wrote the preamble.

Mr. Ballinger: So then what we have done is just taken the application as it is and transformed it into a bill, without any sort of legal opinion on the —

Ms. Mifsud: When the applicant sends it in, we put it in proper legislative form and we send the bill to the the Ministry of Consumer and Commercial Relations, companies branch, which checks the recitals that they are correct. We send it to the public trustee and we send it to the Ministry of Revenue for any comment. As to the facts of what he intends, of course, it is nothing that anybody can really verify, but the facts set out there as to when they are dissolved and under what authority are checked by the ministry.

Mr. Ballinger: I am sorry, and I do apologize, but I want to know exactly in my own mind what we are doing here, especially with this one. When we start talking about striking out parts of the preamble—

Mr. Smith: They both agreed to it.

Mr. Ballinger: There was some question. They agreed to the first part, but there was some question from this gentleman. He did not agree to the second part at all.

Mr. Boyle: I withdrew my comment in that respect.

Mr. Ballinger: I am sorry, I did not hear that. I apologize.

The Acting Chairman: First of all, in answer to the question of Mr. Callahan, we do have here a letter from the office of the public trustee. Do you want me to read that into the record?

Mr. Callahan: Indicating that he has no interest in the—

The Acting Chairman: "Re Machin Mines and Prow Yellowknife Gold Mines Ltd.

"This will acknowledge receipt of your memorandum of the 13th instant, which the public trustee has referred to me for reply. This office has no files upon the above-noted defunct corporations. Accordingly, the public trustee has instructed me to inform you that he has no objection to the proposed bills."

Mr. Smith: You were going to make a motion?

Mr. Callahan: I will have to wait until the chairman calls the preamble and I will move a motion to amend it.

The Acting Chairman: Shall sections 1 to 3 carry?

Interjection: The preamble first.

Mr. Callahan: You have to call the sections first, then the preamble.

Sections 1 to 3, inclusive, agreed to.

The Acting Chairman: OK. Now we have an amendment to the preamble.

Mr. Callahan: Are you calling, shall the preamble carry?

The Acting Chairman: Mr. Callahan moves that the preamble of the bill be amended by striking out "that the applicant represents a former director of the corporation" in the 11th and 12th line.

Motion agreed to.

The Acting Chairman: Shall the preamble, as amended, carry?

Preamble, as amended, agreed to.

Title agreed to.



Bill, as amended, ordered to be reported.

The Acting Chairman: Things are getting more complicated. We should get a lawyer in here.

Mr. Ballinger: One for one, Mr. Chairman.

The Acting Chairman: We are batting .500 so far, except we are in the wrong business, we should be in baseball.

Interjections.

The Acting Chairman: We will move on to Bill Pr38.

#### PROW YELLOWKNIFE GOLD MINES LTD. ACT

Consideration of Bill Pr38, An Act to revive Prow Yellowknife Gold Mines Ltd.

Mr. Kanter: Mr. Rapski is again appearing and also Henri Galle, the president. Again, this is a bill to revive a corporation. I am not aware of any opposition in the case of this bill, although you may wish to hear from the applicants briefly.

Mr. Rapski: Last year I proceeded with this bill and, at the same time, with Machin Mines. At that time, I was working for George Ross, who was the major shareholder of Prow Yellowknife Gold Mines Ltd. In June of last year, Mr. Ross passed away.

Subsequently, Mr. Henri Galle here purchased the majority of the assets of the estate of George Ross and so we decided to continue with the application for revival.

Mr. Galle: That happened on the last day of September 1987 that I actually, in effect, purchased whatever rights the estate had in about nine companies, one of them being Prow Yellowknife Gold Mines Ltd.

Therefore, the original application and the advertisements and so on in the paper were done still under Mr. Ross. However, it then became an estate a few months later. Subsequently, we have carried on on behalf of the estate and on behalf of ourselves and the old shareholders of the company.

We had a bit of difficulty deciding what I mentioned as president. In effect, again, it sort of combined the rights of the president, who is now deceased, so we are not quite clear on the status of that matter. However, we decided to proceed with both in interests of the estate and for the old shareholders, as there are over 200 shareholders who have shares in Prow Yellowknife. It has, as far as I know, no assets.

I do not even have documents. Unfortunately, my lawyer decided to move on May 1 and has not been able to locate a file, among other things. All the documents and shareholder listings and so on are in there.

Mr. Haggerty: I have been advised by the corporations tax branch dealing with Bill Pr38 and Prow Yellowknife Gold Mines Ltd. that the above corporation has complied with all its requirements. "This ministry, therefore, has no objection to the revival of these corporations." That is from T. M. Russell, Deputy Minister of Revenue.

The Acting Chairman Is there anybody opposed to this action?

Mr. Callahan: Can I ask a question? If you were the applicant in the former application and it was by mistake or inadvertence that the corporation became dissolved, it must have been beyond five years. You can simply apply without even coming to us. It has been dissolved for more than five years.

What was happening to these files? Why was there inadvertence?

Mr. Rapski: With Prow?

Mr. Callahan: Yes.

Mr. Rapski: In our office, we had a number of companies and during the mid-1970s and early 1970s, because of actions of the Ontario Securities Commission and so on, junior mining companies were unable to raise funds on the street, and these corporations just went by the wayside because we could not raise funds. Now the Ontario government is encouraging junior mining and encouraging the revival of corporations to get back into exploration.

Mr. Callahan: But that is not inadvertence. You just let it lapse.

Mr. Rapski: Lack of funds.

Mr. Callahan: How can we have a statement and a recital that it is due to inadvertence if, in fact, what happened was that you just let—

Mr. Rapski: I am sure the funds were always there in Mr. Ross's pocket. You know, a day goes by and he says, "Pay the tax or else." Then the final day goes by and it did not get paid.

Mr. Callahan: This one says that the reason was failure to comply with the Corporations Tax Act, which we understand has now been complied with. But then it goes on to say "the default occurred by reason of inadvertence."

Mr. Rapski: I mean inadvertence in paying taxes.

Mr. Callahan: You are telling us it was not inadvertence. It was simply that they were allowed to die because there was no reason for having them continue to exist.

Mr. Galle: There were no funds and it is rather expensive, either monthly or yearly, to keep the Ontario Securities Commission happy with statements and, obviously, shareholders' meetings and so on. In those days there were no funds and the company, in effect, died a rather natural death.

As I say, however, there are about 200 shareholders who would obviously be rather interested in seeing the company revived because at present the shares they have are of zero value. Hopefully, something will be done with the company so that at least there will be some returning value in it.

Mr. Callahan: I understand—and you can correct me if I am wrong—that there are no assets of this company.

Mr. Galle: I accept the fact that 200 shareholders have shares in a company that has no assets, but I presume they consider it an asset in the future if it will be revived and if something will be done. I negotiate for industrial companies and so on to merge them with public companies, so that is the final aim of the—



Mr. Callahan: This is not buying a tax loss, is it?

Mr. Galle: No. The liabilities as they are have been filed with this ministry—the advertising and so on. I do not know how much liability there is beyond that.

Mr. Rapski: Excuse me for one second. What I meant by inadvertence was the inadvertence of the directors and the secretaries to pay the tax. I remember when we suddenly discovered we had lost this charter. We were quite upset.

Mr. Callahan: Because the files were mislaid or lost, that would be inadvertence?

Mr. Rapski: No. The tax was not paid. The inadvertence was in not paying the tax.

Mr. Callahan: OK. Just one question to the legislative counsel. What are the bases for reviving corporations? Are not two of them, inadvertence or mistake?

Ms. Mifsud: The committee has traditionally looked for some carelessness or some sort of unintentional reason. They have looked favourably on an application if it was unintentional. If the applicant were to state, "We deliberately let it default because we did not want to pay the tax," the committee obviously would not view it very favourably. So we usually put a reason in there, or the applicant usually puts in a reason that hopefully reflects reality. I think the word "inadvertence" is used more because it is in most of the precedents that they follow.

It is arguable that it was inadvertent that they were dissolved but not inadvertent that they failed to pay the taxes. They do not always realize the consequences to the corporation if they fail to pay or if they fail to file under the Corporations Information Act.

Mr. Callahan: Is there a loss of revenue to the province for them failing to pay the tax for, say, 10 years and then coming and asking for a revival based on that tax holiday, as it were?

Ms. Mifsud: We send the bill to the Ministry of Revenue. It is not sent to the committee or introduced until the Ministry of Revenue gives its consent. I am not sure how many years they go back or whether it is all. Perhaps the applicant could better answer that. But it is not sent to this committee until the Ministry of Revenue is content with the payment.

Mr. Rapski: You pay your tax right back, whatever you owe. In this case, I believe it is 1974 or 1976. The interest charged each year has to be computed separately according to the interest rate. Say it was cancelled in 1974. The interest rate is charged from 1974 all the way forward and, of course; the 1975 year is carried all the way forward and the 1976 and so on.

Mr. Callahan: I guess my only concern is that you have said the reason the tax was not paid was that you kind of put these on the shelf and you tell us that the shares have zero value. What is the reason for coming here and asking for a revival rather than simply incorporating the company?

Mr. Galle: Because over 200 shareholders who, for whatever the company had existing and written, presumably the gold potential, had bought

shares over those years and have those shares at present with that company. Of course, it is of zero value.

If and when the company is revived, at least it has the possibility of buying another company or merging with another company or potential property or whatever it may be—an asset—and at that point in time there would definitely be a value, certainly more than what is zero at the present time.

Mr. Callahan: If the company has no assets, how can the shares have any assets and what is the value of the company? I am sorry. That sounds naive, but why would you buy the assets of a company where there are no assets—

Mr. Galle: There are no assets.

Mr. Callahan: —other than for a tax loss?

Mr. Galle: There is no tax loss, unless for \$2,000 or \$3,000 which has been spent up to now on advertising, paying the Ministry of Revenue and so on. Those are the liabilities.

Nobody, I believe, could go out and try to create a tax loss that way. We are just concerned about the shares that the shareholders have, and they are definitely worth nothing today. With a revival, at least something can be done. I was under the presumption that each and every case of revival of a company is, in effect, the same case, except that there may be some assets.

In the two cases that we heard earlier, there are disputable assets or at least people are fighting for it and want to have a chance to fight about it when the company is revived.

Mr. Callahan: That is right.

Mr. Galle: This is a clean one.

Mr. Callahan: On the contrary. I do not know about the rest of the committee members, but I take the view that there are no assets. I have yet to get a logical answer as to why you want to revive a corporation where there are no assets.

In the other instances, there were assets at issue that had been vested in the public trustee because of the charter lapsing or disappearing, or whatever the technical word is, and there was some reason to revive it. But what is the reason to revive it? You still have not given me a reason.

Mr. Galle: If you had shares in this particular company, Prow Yellowknife, which you would have bought in 1975—

Mr. Callahan: And there are no assets.

Mr. Galle: —would you be interested in reviving this company?

Mr. Callahan: Not really.

Mr. Galle: Why not?

Mr. McCague: Well, I would.



Mr. Smith: May I ask a supplementary? You have speculative assets. Is there land here that you speculate on or is there no land, property or anything in this company?

Mr. Rapski: We have numerous assets that we could put into this.

Mr. Galle: No, no. There is nothing in this company.

Mr. Smith: Nothing. It is absolutely a shell.

Mr. Galle: It is a shell.

Mr. McCague: I think what we are talking about is what used to be referred to as wallpaper, is it not? Sometimes those do get revived. There may be another way of doing it. I do not know whether our Brampton lawyer could tell us that or not. There may be another way of doing it, but I consider it to be a fair thing for the people who invested whatever and lost it before because they do have some hope of regaining it. I do not see anything the matter with it now. Maybe the lawyer could enlighten us here.

I move that we start through the process of items 1 to 3.

Mr. Callahan: Ask for a recorded vote.

The Acting Chairman: Shall sections 1 to 3, inclusive, carry?

Mr. Callahan: I am opposed.

Sections 1 to 3, inclusive, agreed to.

Preamble agreed to.

Title agreed to.

Bill ordered to be reported.

1120

The Acting Chairman: I wonder if we are eligible for the bar now, after those four cases.

We are proceeding with Bill Pr24, An Act respecting the Hamilton Civic Hospitals. We have the sponsor, Ms. Collins, and I guess only the applicant here, Mr. Cranfield.

#### HAMILTON CIVIC HOSPITALS ACT

Consideration of Bill Pr24, An Act respecting the Hamilton Civic Hospitals.

Ms. Collins: This bill has been worked out in co-operation with the city of Hamilton, the region of Hamilton-Wentworth and the Hamilton Civic Hospitals board. Mr. Cranfield is the solicitor for the Civic Hospitals and is available to answer any questions from members of the committee.

The Acting Chairman: Do you wish to make any comments, sir?

Mr. Cranfield: The bill, basically, will permit appointment of certain members by the city council to the board of directors of Hamilton Civic Hospitals. That is the main thrust of it.

The discussion or reconsideration of the Hamilton Civic Hospitals Act occurred because the region was considering certain aspects of its act and the Hamilton Civic Hospitals Act, and so at the same time, the hospitals got together with the city and the region and have come forward with this bill. We have met with legislative counsel and representatives of the ministries of Health and Municipal Affairs in coming to the wording of the bill.

The Acting Chairman: I wonder if Mr. Neumann could make a comment on behalf of the ministry.

Mr. Neumann: On behalf of the government, I do have some comments. I would mention to members of the committee that the bottom line, however, will be no indication of concern or objection on behalf of the government, but I would like to bring a couple of things to your attention.

First, there is a question of timing here in terms of proclamation. A provision of the current act that created Hamilton-Wentworth makes the regional council responsible for making all municipal appointments to the board of Hamilton Civic Hospitals. An amendment has been enacted by the Legislature to delete this provision. Royal assent, however, is being held up pending this private bill, because we wanted them to go forward together. Otherwise, they would be in conflict. This private bill will then allow that other amendment, already passed by the Legislature, to go forward at the same time.

With respect to the specific proposals here, I just wanted to bring to your attention that the Ministry of Health initially indicated a concern in that it wanted a modification to the bill to specify that the ministry must also approve disposal of property. The staff of the hospital board indicated that ministry approval is usually sought, in any case, with respect to disposal of property, so we have received verbal assurance from the ministry that it is no longer expressing a concern. We were promised a memorandum on this. However, as of this date the memorandum has not arrived.

Simply, the board has a right to dispose of the property with the support of the city, and there was a concern of the ministry that the ministry also give its consent, but it is a standard practice that hospital boards seek the consent of the ministry for disposal of property, in any case. So we feel it is not really necessary that it be in there.

There was another section that dealt with a requirement that adequate insurance be carried, and the Ministry of Health simply commented that it felt this was redundant because it is already required in general legislation. But there is no conflict here. It is simply insurance. This private act also requires that adequate insurance be carried.

The bottom line is that we really have no concerns. The government supports the bill. It provides for the city of Hamilton to make appointments, both municipal and private citizen appointments, to this board. The municipal elected official appointments will be within the term of office. The private citizen appointments will be concurrent with the five-year terms as provided under the Ministry of Health.



Mr. McCague: For the most part, we have approved bills like this, but I wonder if Mr. Neumann would be happier if he had the letter in his hands. In other words, I guess I am saying, we do not report it to the House until that letter is in hand?

Mr. Neumann: If it were a matter of some considerable substance, I would say yes, but in this case, we have the comment and the assurance from the hospital people that that is a standard practice, to get consent of the Ministry of Health. Therefore, it is not required in this bill.

The Acting Chairman: Any further questions?

Mr. Neumann: I am sorry. I am being advised that it is required under the Public Hospitals Act already in any case. Yes, in the normal course of events, I would like to see the memorandum and not just have the verbal consent, but I do not think it is a matter of substance.

Mr. Callahan: It is a way you have of taking it on the record, though.

Mr. Neumann: Yes.

Mr. Callahan: There would be files, so—

Mr. Smith: I am just trying to get some clarification in my own mind, but does this make the hospitals appear, or be, more like private corporations compared to what they are under the umbrella of the municipality? Can they do more things on their own now that they could not do before? Is that what that preamble means?

Mr. Cranfield: No, I do not believe so.

Mr. Neumann: It deletes the responsibility from Hamilton-Wentworth and places the responsibility for appointments at the city of Hamilton level.

Mr. Smith: But it says in the explanatory note there, "The bill also eliminates the capital grant power of the regional municipality." I wonder if it treats the hospitals more as private corporations in that the municipality does not really look after or try to gain capital funds for them in the same way that they used to.

There is something similar happening in one of the hospitals in my own riding, and I am trying to get this one clear in my mind so I will understand that one. That is what I am asking here. Is it going to become more of a private corporation than it was before this bill?

Mr. Neumann: In answer to that, Mr. Chairman, I would ask Mr. Chipman to perhaps comment.

The Acting Chairman: OK.

Mr. Chipman: Mr. Chairman, as I understand the change, what this will do is make the Hamilton Civic Hospitals board more like most other hospital boards where there is not a requirement that the municipality be responsible for certain of the financial obligations of the board itself. I cannot really say it makes it more like a private corporation, but it brings it more in line with other hospital boards across the province.

I cannot really speak further to that. You would have to have somebody here from the Ministry of Health to answer any more specific questions regarding the hospital board.

Mr. Smith: How many more of the hospital boards are going the way that this bill suggests? How many are there at that point now? Would you have any idea? Seventy per cent of them?

Mr. Chipman: I would imagine—I certainly do not have numbers—that the bulk of hospital boards in the province would not have the provision that is being deleted by this legislation.

Mr. Ballinger: Each region is set up differently and, obviously, in this particular case, the region of Hamilton-Wentworth, the actual structure of the corporation is certainly different to anything I have ever seen. In the region of Durham, our act was not established that way.

The Acting Chairman: Ms. Collins, you wanted to make a point?

1130

Ms. Collins: I wanted basically to say the same thing. There are five hospitals in Hamilton, and what it does is—I know how you feel about it—it just brings the Civic Hospitals in mind with the relationship the region has with the other hospitals. It does not prevent a region from giving capital grants if it wishes. In fact, recently, it gave \$20 million to all of the hospitals for their rebuilding.

The Acting Chairman: Any other comment?

Mr. Cranfield: I think I agree with what is being said about this. I do not think it is more private. It is just that the regional municipality wanted to initiate that part, as it says in the explanatory note, and now the city will make appointments as opposed to the region.

Mr. Callahan: Do I gather that the region is responsible for any deficit in the operating budget of the hospital? Is that what is happening?

Mr. Neumann: Technically, that is the case.

Mr. Callahan: OK. What this is doing is now making the province responsible for the operating deficit of hospitals. Is that right?

Mr. Neumann: Recognizing the reality.

Mr. Callahan: In light of certain comments that were made about operating deficits of hospitals recently, is there any concern about that, that there were recent statements made about hospitals operating within their budgets and no deficits being incurred?

Mr. Ballinger: Do not read something that is not in there.

Ms. Collins: This bill was originally drafted in 1985.

Mr. Callahan: Before those comments. All right.

Interjection: Nice try, Bob.



Mr. Callahan: I just thought I would find out what was going on.

Mr. Neumann: If I could just comment with respect to the elimination of that section from the responsibility of the Hamilton region, the wording that we have from Ministry of Health, paraphrased here, is that "this requested amendment formalizes existing facts." It is not going to mean a substantive change.

Mr. Callahan: Bring it in line with other hospitals.

Mr. Neumann: That is right.

Sections 1 to 15, inclusive, agreed to.

Title agreed to.

Preamble agreed to.

Bill ordered to be reported.

The Acting Chairman: Now we get down to the last item of business. Bill Pr30, an Act respecting The General Hospital of Port Arthur.

Mr. Ballinger: I move we throw it out.

#### GENERAL HOSPITAL OF PORT ARTHUR ACT

Consideration of Bill Pr30, An Act respecting the General Hospital of Port Arthur.

Mr. Kozyra: I would like to introduce Allan McKitrick of Thunder Bay, solicitor for the hospital in question.

The hospital in question was incorporated February 18, 1907, with the name, the Railway, Marine and General Hospital. One day later the name was changed to the General Hospital of Port Arthur.

In a search through bylaws a few years ago, Mr. McKitrick discovered that the letters patent for that name change did not exist. Conducting extensive searches elsewhere—and he could elaborate on that—he was unable to find them either in Thunder Bay or in government files.

This could create problems in corporate affairs and also in situations such as mergers. There has been talk, at least in the initial stages, of possible hospital mergers in the Thunder Bay region and so on. I think this matter would take on great importance at that time.

We are operating at the present time under the assumed name and we are here to rectify that.

The Acting Chairman: Thank you.

Mr. Neumann: The Ministry of Municipal Affairs really has no direct interest or concern with respect to this bill. We understand why the hospital is making the application and we have received no expressions of concern from the Ministry of Health.

Sections 1 to 7, inclusive, agreed to.

Preamble agreed to.

Title agreed to.

Fee-waiving motion agreed to.

Bill ordered to be reported.

Mr. McKittrick: Thank you very much.

Mr. Kozyra: I appreciate the fact that since the solicitor has not said a word, he will not get paid for this bill.

Mr. McKittrick: Thank you. I will say it again. Thank you.

Interjections

The Acting Chairman: These northerners are sure smooth talkers. No questions asked.

The committee adjourned at 11:41 a.m.





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STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

CITY OF TORONTO ACT

WEDNESDAY, MAY 11, 1988



STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

CHAIRMAN: Fleet, David (High Park-Swansea L)

VICE-CHAIRMAN: Beer, Charles (York North L)

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Ruprecht, Tony (Parkdale L)

Smith, David W. (Lambton L)

Sola, John (Mississauga East L)

Swart, Mel (Welland-Thorold NDP)

Substitutions:

Johnston, Richard F. (Scarborough West NDP) for Mr. Swart

Matrundola, Gino (Willowdale L) for Mr. Fleet

Also taking part:

Kanter, Ron (St. Andrew-St. Patrick L)

Clerk: Manikel, Tannis

Staff:

Klein, Susan, Legislative Counsel

Mifsud, Lucinda, Legislative Counsel

Witnesses:

From the Ministry of Municipal Affairs:

Neumann, David E., Parliamentary Assistant to the Minister of Municipal  
Affairs (Brantford L)

Gray, Linda, Adviser, Legislation, Policy

Chipman, John G., General Counsel, Municipal Affairs

From the City of Toronto:

Foran, Patricia F., Deputy City Solicitor

From the Annex Residents' Association:

Bossons, Ila, Chairman

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Wednesday, May 11, 1988

The committee met at 10:11 a.m. in committee room 1.

CITY OF TORONTO ACT

Consideration of Bill Pr56, An Act respecting the City of Toronto.

The Vice-Chairman: Good morning, ladies and gentlemen. If we could begin our session, at the outset I would like to note that the regular chairman of the committee, the member for High Park-Swansea (Mr. Fleet), is not with us today and I think we should record our congratulations to him. He is in Venezuela on his honeymoon. I think that is a delightful state and also a delightful place to be.

Mr. Sola: Much more pleasant than here.

The Vice-Chairman: It is very pleasant here, but I am sure Venezuela is even more pleasant.

Today we have one bill on our agenda, Bill Pr56, An Act respecting the City of Toronto. I will call Ron Kanter, the member for St. Andrew-St. Patrick, and Pat Foran, the deputy city solicitor for the city of Toronto, and Alan Gordon. Perhaps they will be good enough to come forward. I will turn the microphone over to you, Mr. Kanter. I believe that, later, I will call on Ila Bossons, who is the chairman of the Annex Residents' Association, who also has a few comments to make.

Mr. Kanter: Thank you very much, Mr. Chairman. I would expect that the matters coming before you in this committee are perhaps a little less contentious than those that you might see in your other responsibilities, chairing the Meech Lake committee. Nevertheless, they are important to the residents of the city of Toronto. I believe your committee will be considering sections 1, 3, 4, 5, and 6 of this bill and not considering section 2 at this time.

The sections are laid out fairly clearly in the explanatory notes. The first section deals with parking, enabling the city to lease for parking purposes some lands which it owns. Section 3 deals with a social housing provision and the powers of council in connection therewith. Section 4 deals with allowing the city to pass bylaws designating bus parking areas on highways, because of a number of commercial tour operators that are active in the city. Section 5 deals with the permit parking regulations and allows vehicles that have permits to park without using parking meters. This is a problem that is probably more difficult in the congested areas in the city of Toronto than in some of the other areas that members represent, but I am sure that staff can explain the details, if members are interested. Section 6 is to give Toronto city council the authority to deal with vacant buildings which pose fire and safety problems.

There are staff, as I understand it, from all of the city departments to explain the bill in detail. Should you wish to do so, Pat Foran will explain in a little more detail. Then, depending on the level of detail the committee



wishes to get into, staff can explain in greater detail the workings of each aspect of the requested legislation.

The Vice-Chairman: Thank you. May I just make one note? We will have to deal with section 2 and delete it. I would just note that if it is to come back later, it must come back as a separate bill. I believe you are aware of that, but I will just put it on the record. Ms. Foran, if you would like to make some comments, please do.

Ms. Foran: Yes, Mr. Chairman. Section 1 of the bill deals with lands that are owned by the city at 800 Fleet Street. The lands were acquired by the city in 1909, but under the City of Toronto Act, 1903, there is restriction that the city can use the lands only for parks or industrial exhibition purposes. At this time the city is formulating its parks plan but does not have a clear plan. The city would like to be able to continue to lease these lands for parking until required for parks.

The lands have been leased pursuant to 1964 legislation, but that legislation pertained to a specific lessee and now we want to be able to lease them as required in the interim until we get a definite plan for the use of the lands. It is basically just to get around this restriction from 1903. We are not asking that the restriction be deleted, just that we can continue to lease the lands for parking until we require them.

The Vice-Chairman: Do you want to go ahead and comment on the bill? Unless there are questions about individual articles that anyone can address, it might be just as well to go through it all.

Ms. Foran: We will not be making any argument on section 2 and we understand the committee will deal with it as it must.

Section 3 involves special legislation which the city obtained in 1975, which was amended in 1981, respecting assisted housing and assisted housing programs. Basically, the idea behind the 1975 legislation was to encourage the provision of housing at a price or rental below the current market rental or the current market price in the area by granting additional-density bonuses to any developer who would build assisted housing. We are not asking that the 1975 legislation be repealed, merely that it be amended, but because of the rules now, we have to ask for the section to be re-enacted.

In 1986 the city set up a subcommittee to examine the assisted housing legislation and these amendments that are coming forward are the direct result of that subcommittee's deliberations.

The first change that we are asking for is to change references from "assisted housing" and "assisted housing programs" to "social housing" and "social housing programs". This is merely to bring our legislation in line with federal and provincial legislation that talks about social housing. So it is basically a change in terminology.

The next amendment we are asking for would be to redefine what social housing is, basically to confine social housing to accommodation which is entirely owned or leased and operated by a nonprofit co-operative housing corporation or a bona fide nonprofit corporation or by the City of Toronto Non-Profit Housing Corp. The reason behind this amendment is that we would like legislative restraints to show that no one is to benefit financially from the bonuses being given.

The third amendment deals with the fact that at the present time the legislation requires the owner to enter into an agreement. That has caused us some problems because quite often it is the operator of the housing who should enter into the agreement. This is just a technical amendment to say that where the operator of the social housing is different from the owner, both of them will enter into the agreement.

The fourth amendment deals with the ability of council, where there is social housing, to give some exemptions or reductions in zoning standards, such as maybe slightly less parking if there is a social housing project or reductions in setbacks that would otherwise be required in the same kind of housing where there are no social provisions.

The fifth amendment we are asking for provides that council does not have to pass this kind of bylaw to allow the additional density, but it may. Even if the proposal complies with the definition, council does not have to pass the bylaw, simply because council wants to be sure that no one is going to benefit financially. That is the reason for that provision.

The rest of the provisions merely pick up the change in terminology from "assisted housing" to "social housing" and provide that the bylaws and the agreements that were in force when the change occurred, would remain in force until appealed or amended. Again, as I point out, while it looks like a totally new section, these are just amendments to our existing legislation.

#### 1020

Section 4 deals with the right of council to pass bylaws to designate bus loading zones on highways. At the present time in the downtown area there has been a problem with tour buses, particularly in the summer months when tourists are using restaurants and theatres. They are unloaded from the buses and the buses have no place to park. Under existing legislation, the city has no power to make specific rules that would say, "Only tour buses can park in this spot and nobody else," but this is exactly what we are asking for today.

It would be a limited use and it would be in certain downtown areas, say around the O'Keefe Centre, where people could come in, the buses could be parked and they would know that is where they would get their bus when the performance was over. That is basically the reason for section 4.

The Vice-Chairman: I am sure thousands of tourists will thank you.

Ms. Foran: I am sure they will. They will not get lost.

Section 5 again deals with existing legislation called our permit parking legislation. Again, because of the new change in the rules, we had to re-enact the whole section, but the amendment is found in clause 5(1)(e). Under that section, we are merely asking that people who have a permit under the city's permit parking bylaw would be allowed to park at parking meters on the highway without paying a fee. Under the Municipal Act, if you park at a parking meter, you must pay the fee. We are asking that if a person has come to the city and bought a permit to park on the street, he should be allowed also to park at a parking meter without paying any fee. That is the reason for section 5.

The purpose of section 6 is to provide for the safety and security of vacant buildings in the city of Toronto. The proposed legislation came forward in a report from the fire chief and the commissioner of buildings and



inspections, which recommended the passing of a fire safety and security bylaw which would contain standards for the securing of vacant buildings and which would authorize the city to take certain measures if the owner neglected or failed to secure his or her vacant building in accordance with the standards. The section sets out that there would be a nonhazard-type building and there would be a hazard building. I can go through what the criteria would be if you wish.

Under the proposed legislation, council would be able to set out requirements in a bylaw and would be able to say that no owner of a hazard building could permit his or her building to be vacant unless it is maintained in accordance with those standards. Basically, the standards are to protect against fire and to protect against entry of persons who may cause a fire. In so far as a nonhazard-type building is concerned, the standards would be different. Basically, at this time it would require the boarding up of the building with plywood.

I am told there are about 300 hazard buildings in the city of Toronto and about 200 nonhazard buildings. In 1987 and to date in 1988, there have been 217 fires in vacant buildings in the city; 78 of those are suspected to be arson related and in 14 of those there have been injuries to either firefighters or private citizens. Approximately four fires occur in vacant buildings each week, and 25 per cent of those are suspected to be arson related, so there is a need for the legislation, and the staff of the fire chief's department and staff of the buildings department are here to speak to that need if you wish.

That is about all I have to say. I can answer any questions you may have.

The Vice-Chairman: Thank you very much. I will ask Mr. Neumann, the parliamentary assistant to the Minister of Municipal Affairs (Mr. Eakins), to comment on the bill, then I will ask Ms. Bossons to make her comments and then we can open it up to questions.

Mr. Neumann: My role this morning is a rather easy one because many of the concerns that existed from a number of ministries have been resolved and suggested amendments have already been incorporated into the bill.

I am happy to report that we are either in support of the various sections or have no objection to the various sections, and the incorporation of amendments has handled the concerns. There was a concern with section 6 that adequate notice be given to property owners, and that has been included, and there was an amendment to the social housing section that has been incorporated into the bill. The Ministry of Transportation is supportive of section 4 and the bus parking.

Basically, I think that summarizes our position. The work has all been done before arriving here at the committee, so unless committee members have concerns or questions which you wish to discuss, there certainly are not any from the perspective of the ministry or any of the ministries with which we have been in contact.

The Vice-Chairman: Thank you. On a beautiful spring day, it is nice to know that everybody is happy.

Mr. Neumann: The one point that I should raise is that there was a serious concern with section 2, and my comments are provided that section 2 is withdrawn.

The Vice-Chairman: Right. We will have a motion later, when we are going clause by clause, to withdraw that.

Ms. Bossons, welcome. I hope you are in good humour and happy.

Ms. Bossons: I am very happy to see that everyone is so positive about this. I am here to speak about a very minuscule part of what is before you, and that is clause 5(1)(e), which has to do with letting parking permit holders park where there are parking meters. I thought I would advise you that, because of the laws currently in effect, I have a long tradition of breaking the law; in fact, the city of Toronto forces me to break the law and has for years.

In my neighbourhood, which is just north of the Park Plaza Hotel—I am sure you know it—every single residential street that runs between Avenue Road and Bedford Road has parking meters on it, which is unusual but not unique in Toronto. As residents of these streets, we cannot ever park our cars on our streets and then actually go somewhere. We are forced to stay home and feed the parking meter every hour, and this is where the lawbreaking comes in because, as you should know, by the letter of the law, you should never park longer than one hour at a parking meter, although I am sure you have all stayed longer, paid or unpaid.

The Vice-Chairman: We are all lawbreakers around this table in one form or another.

Ms. Bossons: So I am urging you to make us more law-abiding. It is also highly inconvenient. Even though enforcement is not very good, we do find spaces at these meters upon coming home from work. What then happens is, at midnight, when you want to go to sleep, you remember: "Oh, my God, the car is there. I won't be using it tomorrow. I have now got to get dressed and drive around the neighbourhood and see if I can find a space on a street without a meter." It is extremely inconvenient and also not quite cricket the way it is now. I urge you, even if you disagree with everything else, to speed clause 5(1)(e) through the Legislature. It has been before you for a long time. In fact, it was before the minority government, I think, with one reading. It then died and it is here before you again.

I also notice section 6. In this area, again northwest of here, we have some very sorry experience with buildings which are held by speculators and which have remained unoccupied for years and years and years. It is hard to believe, but there were million-dollar buildings just near the Park Plaza Hotel which have stayed empty for 20 years because they were held for speculation. We have had fires in such buildings.

Just a block north of the Park Plaza Hotel, there is, in fact, a building in which people have lived without the benefit of hydro or plumbing for months on end. These are people who break in. It is very difficult to get the owners to comply and make such buildings safer. I am sure the city, in its wisdom, has made those bylaws better than they are now. I do not think they have enough protection now. So, whatever you do, speed section 6 through as fast as you can.

The Vice-Chairman: I am sure all members of the committee will be delighted to help residents of the Annex once again become citizens of the law.

Ms. Bossons: Thank you.



The Vice-Chairman: We appreciate your comments. We move now to questions.

Mr. McCague: Are there any objections to this?

The Vice-Chairman: No, I believe not. The only thing we have to do when we go through it is, it is not a question of withdrawing section 2, but we simply vote against section 2 as we get on it.

Mr. McCague: Maybe I want to vote for it.

The Vice-Chairman: I certainly do not want to interfere with our spirit of co-operation and good humour. That is the only one we have to deal with.

Mr. McCague: That being the case, if nobody has any questions, I suggest you proceed with that process.

The Vice-Chairman: Is that agreeable to members of the committee?

Agreed to.

The Vice-Chairman: In that case, I will begin by dealing with section 1, then section 2 and then, depending on what happens with those two, we may deal with all rest in one lump sum.

Section 1 agreed to.

Section 2:

The Vice-Chairman: Shall section 2 carry?

Mr. McCague: I move that it be deleted or whatever.

Clerk of the Committee: Do you want to vote against it?

The Vice-Chairman: We will just say "no." OK?

Section 2 negatived.

The Vice-Chairman: Witness the strength of majority government, with conviction.

Sections 3 to 9, inclusive, agreed to.

Preamble agreed to.

Title agreed to.

Bill ordered to be reported.

The Vice-Chairman: I want to thank you very much for coming this morning, and I trust that the rest of the day goes as well.

The committee adjourned at 10:31 a.m.

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STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

BIG CEDAR ASSOCIATION ACT  
LFP MANAGEMENT LIMITED ACT  
MID-CONTINENT BOND CORPORATION, LIMITED ACT  
CITY OF SUDBURY ACT  
CITY OF NORTH YORK ACT  
CITY OF OAKVILLE ACT

WEDNESDAY, MAY 18, 1988



STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

CHAIRMAN: Fleet, David (High Park-Swansea L)

VICE-CHAIRMAN: Beer, Charles (York North L)

Cleary, John C. (Cornwall L)

Fawcett, Joan M. (Northumberland L)

McCague, George R. (Simcoe West PC)

Pollock, Jim (Hastings-Peterborough PC)

Pouliot, Gilles (Lake Nipigon NDP)

Ruprecht, Tony (Parkdale L)

Smith, David W. (Lambton L)

Sola, John (Mississauga East L)

Swart, Mel (Welland-Thorold NDP)

Also taking part:

Campbell, Sterling (Sudbury L)

Carrothers, Douglas A. (Oakville South L)

Daigeler, Hans (Nepean L)

Polsinelli, Claudio (Yorkview L)

Clerk: Manikel, Tannis

Staff:

Mifsud, Lucinda, Legislative Counsel

Klein, Susan, Legislative Counsel

Witnesses:

From the Ministry of Municipal Affairs:

Neumann, David E., Parliamentary Assistant to the Minister of Municipal Affairs (Brantford L)

From Big Cedar Association:

Stinson, David G., Legal Counsel; with Fasken and Calvin

From the Ministry of Consumer and Commercial Relations:

Barrows, J. C., Senior Solicitor, Companies Branch

From LFP Management Ltd.:

Raytek, Peter V., Legal Counsel; with Shibley, Righton and McCutcheon

From Mid-Continent Bond Corp. Ltd.:

McWilliams, David, Legal Counsel; with Cowan, McWilliams and Salvador

From the City of Sudbury:

Dean, W. F., City Solicitor

From the City of North York:

Dixon, George M., Solicitor

From the City of Oakville:

Payne, Lois E., Assistant Town Solicitor

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Wednesday, May 18, 1988

The committee met at 10:14 a.m. in committee room 1.

BIG CEDAR ASSOCIATION ACT

Consideration of Bill Pr2, An Act to revive Big Cedar Association.

Mr. Chairman: Ladies and gentlemen, I see a quorum. Just to put it on the record, I understand from the clerk that the New Democratic Party representatives are unavailable right now, but they have indicated that we should proceed in their absence. I am grateful for their co-operation.

The first matter that is before us is Bill Pr2, An Act to revive Big Cedar Association. The original sponsor is Mr. Owen. I understand he is not available, but Mr. Daigeler is before the committee today. Mr. Daigeler, perhaps you could introduce both of the applicants. By way of an explanation for all the people who are present today, the procedure will be to request that the sponsor introduce the applicants and either the sponsor or the applicants—there is no need for both—can then give a brief explanation of why they are here.

It is not necessary to go on at great length because the members of the committee will have an opportunity to ask you questions. If at the end of that process you want to make a further statement, you certainly can. Subsequent to that, the members will in all probability vote on the matter.

Mr. Daigeler: It is my pleasure to introduce on behalf of my colleague, Bruce Owen, Bill Pr2, An Act to revive Big Cedar Association. I have here with me David Stinson, solicitor, and Adair Crosby, student of law. I will let Mr. Stinson speak to the purpose of this bill and why he has brought it before the committee.

Mr. Stinson: Thank you, Mr. Daigeler and Mr. Chairman. Big Cedar Association is an association of cottagers on Lake Simcoe north of Toronto. It was incorporated in 1922 by letters patent. Through inadvertence six years ago, the corporation was dissolved because it had failed to file annual returns. We are therefore here to seek a private bill reviving the corporation so that it may be restored to its former status.

Mr. Chairman: Are there any questions?

Mr. Ruprecht: Just one, since I have a special interest in Lake Simcoe. What are your boundaries?

Mr. Stinson: Within Innisfil township around Big Cedar Point, roughly the fourth to the seventh concession of Innisfil township on the west.

Mr. Ruprecht: Where would that be in relation to the north, south, east and west lines?

Mr. Stinson: We are south of Barrie. All our cottagers are right on the lakeshore on the west side of Lake Simcoe.



Mr. Ruprecht: Thank you very much.

Mr. Chairman: As a matter of record, perhaps we could have the representative of the Ministry of Consumer and Commercial Relations advise if there are any objections from the point of view of the Minister of Consumer and Commercial Relations (Mr. Wrye)?

Mr. Barrows: Mr. Chairman, my name is Barrows. I am senior solicitor in the companies branch. We have reviewed the bill from the point of view of the corporate law aspects and we have no objection to its passage. The only request we would make of the solicitor for the corporation would be that, on revival, a current filing be made under the Corporations Information Act setting out the names of the officers and directors of the corporation and where its head office is.

Mr. Stinson: Certainly. We will do that.

Mr. Barrows: Fine. No objection.

Mr. Chairman: I take that as an undertaking to the committee. Are there any other questions by members of the committee?

Sections 1 to 3, inclusive, agreed to.

Preamble agreed to.

Title agreed to.

Bill ordered to be reported.

#### LFP MANAGEMENT LIMITED ACT

Consideration of Bill Pr11, An Act to revive LFP Management Ltd.

Mr. Chairman: The next matter on the agenda is Bill Pr11, An Act to revive LFP Management Ltd. Mrs. Fawcett is the sponsor.

Mrs. Fawcett: I am pleased to sponsor Bill Pr11, An Act to revive LFP Management Ltd. The applicant is Louis Peters and with me today is Mr. Peters's solicitor, Peter Raytek. At this time I will turn it over to Mr. Raytek to briefly explain the background of the bill and answer any of the committee's questions.

Mr. Raytek: Thank you. LFP Management was incorporated on October 10, 1967. It was dissolved in February 1981 for failure to file returns. All returns have now been filed, including the notices required under the Corporations Information Act. The failure to file returns was due to inadvertence and, therefore, we are now making application to revive LFP Management Ltd.

1020

Mr. Chairman: Thank you very much. Mr. Barrows, any objection from the ministry?

Mr. Barrows: Again, Mr. Chairman, we have no objection. I believe counsel has been advised of the need to make the filing under the Corporations Information Act—the same filing I referred to on the other bill—and subject to that, the companies branch has no objection to the passage of the bill.

Mr. Chairman: Thank you very much. Are there any questions by members of the committee?

Sections 1 to 3, inclusive, agreed to.

Title agreed to.

Preamble agreed to.

Bill ordered to be reported.

#### MID-CONTINENT BOND CORPORATION, LIMITED ACT

Consideration of Bill Pr 28, An Act to revive Mid-Continent Bond Corporation, Limited.

Mr. Chairman: This is a matter wherein Mr. Ray is the sponsor, but he is unavailable and Mr. Cleary is appearing on his behalf.

Mr. Cleary: It is a pleasure for me to take the place of my colleague Michael Ray for this bill, An Act to revive Mid-Continent Bond Corporation, Limited, and it is a pleasure for me to introduce David McWilliams, the solicitor.

Mr. McWilliams: Mr. Chairman, ladies and gentlemen, this is a similar application to the two that you have had before you. You have the compendium in support of the application.

Very shortly, it is a corporation that has been dead a long time, a little longer than the two previous ones. The charter of the corporation was cancelled in 1951, shortly after the chief mover of the corporation died, and 25 years after he died, it appeared that there were assets that had not been disposed of, had not been discovered. There was natural gas, essentially. So we come before you on behalf of the heirs of the prime mover to revive the corporation.

Mr. Chairman: Thank you very much. Is there any comment from Mr. Barrows on behalf of the ministry?

Mr. Barrows: I have discussed this matter with Mr. McWilliams. This is an unusual case in that the corporation was dissolved 30 some years ago. I understand the reasons why he is seeking revival and we have no objection to that revival.

There are some ancillary points that Mr. McWilliams and I will be discussing, such as the fact that the law has changed so much in the 30 years since the corporation was dissolved and, again, the same old need to make a filing under the Corporations Information Act. We have reached agreement that we will be addressing those issues. On that basis, the branch has no objection to the bill being passed.

Mr. Chairman: Are there any questions by other members of the committee? I have a question then. If this bill does not go through, who gets it?

Mr. McWilliams: I do not know. The obvious people are the people who originally owned the company or their heirs. I think the province might possibly make a claim, but this is very much similar to the situation that



most companies find themselves in. You have precedents down through the years of companies that have permitted themselves to die thinking that they had disposed of all their assets. Then an asset has been discovered and a company is revived for the purpose of dealing with the asset. This is essentially the same, except the number of years is a little longer.

Mr. Chairman: I understand. What I am wondering about is whether there is a person out there somewhere who could say, "I did not get notice of this proceeding and, by virtue of passing this act, the Legislature has prejudiced my legal interest in the natural gas somewhere."

Mr. McWilliams: That is an entirely proper question, Mr. Chairman, and I think I can answer it this way. The requirements of the act and the whole system of reviving the dead involves the intention and the publication in the Ontario Gazette, which is notice to everyone concerned.

We have satisfied ourselves that it comes down from one man. We are the representatives, the heirs of that one man, and by a succession of wills—it is rather complicated—we have satisfied ourselves that we know who it is. There is no one else who has any interest.

Mr. Chairman: OK, but for 30 years somebody, presumably, somewhere, has thought that he owned this natural gas?

Mr. McWilliams: No. Perhaps I have not answered your question properly. The property was lying fallow until 1977 when they discovered oil and gas in Texas. The registration of the ownership of the property remained in the name of this company, so there is nobody who could have had any interest until the discovery of it; and the company that had discovered the oil and gas ostensibly has been looking for somebody to pay. It took them five or six years to find out who they were.

Mr. Chairman: Who paid the taxes on the land in the interim, in the 20 years from 1957 to 1977?

Mr. McWilliams: I think the interest is a royalty interest only and the taxes are paid by the owner of the land. We are not the owners of the land.

Mr. Chairman: OK.

Mr. McWilliams: I am no expert on Texas law but I think that is the situation.

Mr. Chairman: That satisfies my questions. Are there any questions arising from that?

Mr. Smith: Following along the questions you were asking, if we did not just reincorporate this company, would the person or persons who found the gas down in the Texas oilfield then gain all the money that your company should have? I am trying to find out a little more detail here. I do not know where to get my line of questions going really, but there is something I am missing here. Somebody is going to gain if we do not reincorporate this company.

Mr. McWilliams: The oil company will continue to have the use of the money. Apparently, under Texas law, they have the use of the money indefinitely and, of course, it is in their interest to hold it and use it. The only one to gain, I think, is the oil company, but the registration of the royalty interest is in the name of this company.

Mr. Smith: So Mid-Continent Bond Corporation, Limited was the only shareholder?

Mr. McWilliams: It was the owner of a minor fractional interest. I guess we are both in the same position with respect to oil and gas interests. They are broken up into thousands of interests and there are thousands of people who own an interest in a particular property. Mr. Goffatt, who was the prime mover in the company, dealt heavily in the purchase and sale of oil and gas interests in three states and this was one that he forgot in his old age. He sold most of them beforehand but he forgot this one, obviously. He forgot it probably because oil was not going to be discovered or gas was not going to be discovered for 25 years after he died, which is the best possible reason I can think of.

Mr. Smith: It does seem like a long history, to bring it back.

Mr. McWilliams: It is a long time, there is no question. It came to all of us as a very pleasant surprise to discover that—

Mr. Smith: It must be worth while pursuing, I would have to think, anyway. I guess I will stop right there. Thank you.

Mr. Chairman: Are there any further questions by members of the committee?

Sections 1 to 3, inclusive, agreed to.

Title agreed to.

Preamble agreed to.

Bill ordered to be reported.

1030

#### CITY OF SUDBURY ACT

Consideration of Bill Pr19, An Act respecting the City of Sudbury.

Mr. Chairman: The next matter we have on the agenda is Bill Pr19, An Act respecting the City of Sudbury. Mr. Campbell is the sponsor.

Mr. Campbell: I realize there are at least two committee members who have a history of involvement in Sudbury. I know they will be interested in one of our tourism strategies in Sudbury. Certainly, this is an act to really deal with a very important tourism aspect in our community. That is the Snowflake Festival.

I have with me W. F. Dean, the city solicitor of the city of Sudbury, Ms. Donna MacLeod, the executive director of the Sudbury Snowflake Festival organization.

I think the bill is fairly self-explanatory. I would be open to any questions that either Mr. Neumann or members of the committee might have.

Mr. Chairman: Are there questions by members of the committee? Perhaps first of all, Mr. Dean or Ms. MacLeod could simply read in some of the preamble, so that we have on the record exactly what the bill covers.



Mr. Dean: The bill is to allow the council of the city of Sudbury the opportunity to create a local board, the purpose of which is to promote and create a community festival which has been in existence now for some four years, namely the Snowflake Festival. It also allows for the creation of other community festivals as the council may from time to time deem appropriate.

Under the general law, a municipality is not entitled to create a local board for any purpose unless it is specified. For that reason, we are before you today.

Mr. Chairman: Perhaps Mr. Neumann could provide a comment on behalf of the minister.

Mr. Neumann: Yes. First of all, I would like to express to the representatives of Sudbury my compliments on the initiatives you have taken in your area of Sudbury for the diversification of the economy. I notice the member mentioned the promotion of tourism there. Sudbury has seen a lot of progress over the last few years.

With respect to the bill, the ministry and the government in general has no objection to the bill. We are supportive of it. There was consultation. As I understand it, there are no objections. No objections have been received.

However, the Ministry of Municipal Affairs is recommending an amendment, which I understand the applicant is supporting. That amendment clarifies and eliminates a concern we had regarding the borrowing authority of the corporation, in that a municipal corporation cannot borrow without Ontario Municipal Board approval.

So we think a clause should be added to allow this corporation, created by the city of Sudbury, to be allowed to borrow money, but only from the city of Sudbury so the city could advance it some funds. That would clarify the concern we had relating to the OMB. I understand the applicants support it and Mr. Cleary is prepared to move the amendment.

Mr. Chairman: Mr. Campbell is nodding his head.

Mr. Campbell: Affirmatively.

Mr. Chairman: I believe all the members of the committee have a copy of the proposed amendment, which would involve clause 3(d). Are there any questions from members of the committee?

Mr. Ruprecht: I like to believe I am probably the second person with a stake in it so far.

Mr. Sola: I am the first.

Mr. Chairman: Perhaps we could take turns on this.

Sections 1 and 2, inclusive, agreed to.

Section 3:

Mr. Chairman: Mr. Cleary moves that clause 3(d) of the bill be struck out and the following substituted therefor:

"(d) borrow money solely from the Corporation with the approval of

council on such terms as to interest and repayment as may be determined by council."

Mr. Smith: Could I ask one question? Does this make it almost like a private corporation? Other than by adding this clause 3(d), it limits its powers somewhat? Is it close to a private corporation? Is that what you are really creating here?

Mr. Dean: What we are creating is a local board of a municipality, much the way a business improvement area is created under the Municipal Act and much the way the library boards were created. We are creating the same sort of creature, if you will, as one of those boards.

Section 3, as amended, agreed to.

Sections 4 to 17, inclusive, agreed to.

Preamble agreed to.

Title agreed to.

Bill ordered to be reported.

Mr. Campbell: Thank you very much, Mr. Chairman, on behalf of the citizens of Sudbury. We invite you and members of the committee, when you are in our community in February, to enjoy, along with us, the Snowflake Festival.

Mr. Chairman: We will keep that invitation in mind.

Mr. Ruprecht: Is there going to be a Miss Snowflake?

Mrs. Fawcett: As long as there is a Mr. Snowflake.

Mr. Campbell: Plans are not finalized for the program at this point in time.

Mr. Chairman: A diplomatic answer.

The next matter that is on the agenda is Bill Pr31, An Act respecting the City of North York. Mr. Polsinelli is the sponsor.

#### CITY OF NORTH YORK ACT

Mr. Polsinelli: It is my pleasure to sponsor this bill and introduce it to the committee.

I would like to introduce to the committee George Dixon, who is the deputy city solicitor for the city of North York. He will be pleased to explain the bill and answer any technical questions that you may have.

Mr. Dixon: Very briefly, as you will see from the explanatory notes to the bill, the city is seeking four separate bits of additional legislative authority.

The first is simply with respect to bylaws that would require property owners to clear garbage and debris from the road allowance that adjoins their properties, much as property owners can now be required under the Municipal Act to remove snow. That is clause 2(a) of the bill.



Clause 2(b) seeks authority to require grass on private property to be cut when it exceeds a specified length to be set out in the bylaw.

The bill, as you will see, goes on to provide that no steps may be taken under either of those two clauses until the person who is to be required to do the work has been given adequate notice of the obligation to do so.

Section 2 of the bill deals with the matter of an overnight parking prohibition that is, essentially, being sought for the purpose of accommodating efficient snow removal in the winter months.

The final section of the bill, section 3, seeks to cure what has proved to be, I think it is fair to say, perhaps a technical deficiency from North York's standpoint, at least, in the section of the Municipal Act that enables councils to pass bylaws commonly referred to as sewage impost bylaws, to impose a special charge on heavy users of the sewer and water system.

The section in the Municipal Act currently provides a blanket exemption for any land that is the subject of a subdivision agreement. What we have seen in North York recently, as North York enters the redevelopment cycle, is that there are lands that are serviced with modest sewer and water systems that were originally installed at the time the lands were subdivided.

As redevelopment occurs, there are much heavier loads and much heavier demands on those systems. The amendment, or the additional authority we are seeking in section 3 of the bill, would limit the exemption for lands that are subject to a subdivision agreement to the load those existing services were designed to accommodate. I would be pleased to answer any questions any members may have.

1040

Mr. Chairman: Are there any comments from the ministry?

Mr. Neumann: Yes, we have carefully reviewed this proposed bill and do not have an objection to it. Having said that, there is some comment. The question of the removal of garbage, as was mentioned by the applicant, is similar to the concept that municipalities have presently. They can, under the Municipal Act, require the removal of snow on the sidewalk.

This would require private property owners to keep the publicly-owned portion of the boulevard or sidewalk in front of the house free of litter. North York is seeking this approval. The ministry has reviewed this and has no objection to that.

With regard to grass cutting, we have a proposed amendment that would allow the municipality, at its own expense, to go in and cut the grass for certain classes of property owners such as senior citizens and the disabled. I believe the applicant is willing to add this amendment and Mr. Cleary will be moving the amendment, as I understand it.

With respect to the prohibition on winter overnight parking, while we have no objection to this, the legal people within the ministry do not believe that this is necessary. We believe that North York could prohibit parking without this authority. I suppose we could ask for an explanation as to why they feel it is necessary, but from the ministry legal perspective, it is not. Perhaps it is sort of double insurance, in terms of the municipalities' authority to enforce it and to get courts to be aware where necessary.

Item 4 is something that I can relate to from my municipal experience, with respect to redevelopments. Where there is additional cost to the municipality, it does clarify the situation for them. With North York having developed at a time when subdivision agreements were common, it does clarify their right to add the extra sewer charges. So there is no objection to that section. So we have a few comments, but no objections.

Mr. Chairman: Perhaps, Mr. Dixon, you could advise what the difference of opinion among lawyers is in this instance?

Mr. Dixon: I am not sure, in all candour, that there is really a difference of opinion. I think it is fair to say we anticipate perhaps some difficulty in effectively enforcing a bylaw that might be passed under this enabling section without the clear authority this bill would grant.

Generally speaking, within the Metro Toronto area at least, I think it is fair to say that the public perception and the perception of the justices of the peace, the level at which parking restrictions are enforced, is generally that the only parking restrictions in effect on a street are restrictions that are signed and posted on that particular street.

In other words, you know whether you can park on the street by looking at the signs that are posted on the street. With one exception only, there is, within Metro generally, a blanket three-hour parking restriction, and that is not signed. In fact, to my knowledge it is not signed in any way. But aside from that one, which over the years the public has generally become familiar with, I think the perception is that if there is a parking restriction in effect it is signed on the street.

I think North York comprises approximately 65 square miles. Can that be right? It can be. Yes. It would be impractical to sign every street in North York and I think we anticipate signing the arterial streets, which are the entry points around the perimeter of North York. I do not think anybody intends, obviously, to sign every individual block of every street in North York with a prohibition like this. The feeling was that, as I have indicated, enforcement would be more efficient and more likely if the authority to pass the bylaw and post the signs were neatly contained in one section of a bill.

Mr. Chairman: I have questions I may want to raise myself about that. Before I pose any questions of my own, I think Mr. Ruprecht has a question, and there may be other members of the committee.

Mr. Ruprecht: Yes, I do, but not as it relates to the statement made by the solicitors. If you have one directly related to his comments, maybe you should go first.

Mr. Neumann: I will just add that, in our view, all municipalities have authority under paragraph 125, section 210 of the Municipal Act to prohibit parking. Neither the Municipal Act nor the Highway Traffic Act contain any express requirement for signs. However, we do concede that we feel this section is redundant, but it does give, I suppose, some additional certainty with a view to enforcement that clearly permits them to erect the signs at the perimeters of the municipality. That would then be the sufficient notice to the residents that, if you enter North York, do not park overnight in the winter.

Mr. Chairman: I guess I do not understand why it is that you cannot go ahead and post your signs now without this act.



Mr. Dixon: I think it is fair to say we could do that. Perhaps this is being done out of an abundance of caution, but it is simply that we anticipate some difficulty in some provincial offences courts because we are not proposing that prohibition be signed on every particular street. I think that just flows from what the public in Metro is used to.

Mr. Chairman: But you are really saying that the problem is with the justices of the peace not understanding the law.

1050

Mr. Dixon: In all fairness we have no experience at all to base this on, obviously. We do not have such a bylaw at the moment and we do not have perimeter signs. We have not enacted a prohibition of this kind. There is no experience.

Mr. Chairman: So North York is asking us to pass a law for a problem that does not yet exist, to duplicate a section of the other parts of the law of Ontario that apparently do work?

Mr. Polsinelli: Well, Mr. Chairman, if I may add something.

Mr. Chairman: That is putting it somewhat provocatively. I understand the position.

Mr. Polsinelli: It is not a question that the problem does not exist. The North York public works department definitely feels that there is a problem with overnight parking during the winter months. What this enabling legislation would be doing is basically clarifying the existing law. It is the opinion of the solicitors who are employed by the city of North York that this is necessary in terms of clarifying their rights under the Municipal Act. It is as simple as that.

If the committee feels, however, and the ministry feels that their rights are well enunciated, that they do have the authority, then the committee is free to do what it wishes with this particular section of the legislation. However, it is their considered opinion that the legislation is required in order to clarify their existing problems.

Mr. Chairman: When I said that there is a problem that does not yet exist, I meant the one in terms of enforcement in the court proceedings. I do not think anybody is denying that there may be a parking problem in North York in the winter. There certainly is in the city of Toronto all year round.

Mr. Sola: I am wondering if this section is setting a precedent. Do we have any precedents for that?

Mr. Polsinelli: I believe that there are many situations where on its own initiative, the government will bring in additional legislation to clarify previously passed legislation. I believe in many other circumstances municipalities will approach the province in order to clarify their powers under the Municipal Act if they intend to undertake any specific action.

In terms of a precedent of clarifying legislation, I think that has been done many times, Mr. Sola.

Mr. Sola: In the interest of clarification, I see it says, "all public highways." Does that include residential roads or just main thoroughfares?

Mr. Polsinelli: I would say yes, it would include all roads in North York that are within North York's jurisdiction.

Mr. Sola: Okay, because that could create some problems in the courts. Thank you.

Mr. Chairman: By way of assistance, Mr. Sola, this would allow them to do it. If they do it, they are the ones who have to deal with the public reaction to banning parking on every street in North York.

Mr. Polsinelli: That is right.

Mr. Chairman: I do not presume at least that North York is going to venture quite that far along the field, but that is up to them. If this is passed I suppose they will have the authority to do it.

Mr. Polsinelli: Just say this would allow them to do it better.

Mr. Neumann: In terms of a precedent, clearly every private bill that is passed sets a precedent to some degree and sets the stage for other municipalities to ask for something similar. There are precedents of the Legislature passing private bills permitting the municipalities special authority in parking to accomplish one purpose or another.

Drawing on my own experience at the municipal level, and relating to some degree to what they are asking for here, I can recall receiving advice at the municipal level from municipal solicitors and traffic people that parking changes needed to be signed on every street. The cost is quite high. This would give North York an alternative to sign at the perimeters and to be clear in the enforcement.

Having said that, it is the opinion of the ministry solicitors that it is not necessary. However, there may be some experiences across Ontario that have indicated some problems of enforcement and we have no objection to North York putting this in the bill.

Mr. Chairman: Okay, Mr. Smith and then I would like eventually to get back to what Tony Ruprecht has been waiting very patiently for, on a different topic.

Mr. Smith: Have you had many problems under clauses 1(2)(a) and 1(2)(b)? Have you had problems trying to remove debris from property or cutting grass from property? I think under the Municipal Act you could pass a bylaw, but I am just asking how many problems you have had with this.

Mr. Dixon: Perhaps I might respond with respect to each of the two clauses in sequence. On the first one dealing with garbage and debris, there is no question there is authority in the Municipal Act to require owners to maintain their own property clear of garbage and debris. This clause (a) deals with the public highway that adjoins their property, and there is no such authority in the Municipal Act or in the property standards sections of the Planning Act, so the authority sought in clause (a) is clearly necessary if the owners of the abutting property are to be obliged to remove the debris that most of the time they, themselves, generate on the road allowance.

With respect to clause (b), this grass-cutting matter is something that occurs reasonably frequently and I have heard similar problems expressed by some colleagues from other municipalities about the inability to effectively



require grass and weeds on property to be cut in a timely fashion. This time of year, as we can all see, grass and weeds grow up pretty quickly.

Mr. Ruprecht: I want to trust Mr. Polsinelli's judgement on all of this, but let me ask you one question. Does "public highway" under clause 2(a) also refer to public lands belonging to the railroad, or are we simply talking about deadend streets and abutting land that is not to be used for motor vehicle traffic—it says here, "except the portions thereof used for motor vehicle traffic"? I suppose you do not expect people to run out where a road is heavily trafficked?

Mr. Dixon: No, no, not at all. No, in a typical situation, the road allowance is 66 feet wide. The pavement may be something like 28 or 32 feet from curb to curb, and we are really talking only about this strip lying between the curb and the front property line on private property.

Mr. Ruprecht: I was expecting, actually, that you would be seeking broader authority because there are some very unsightly sites in Metro Toronto, not just in North York.

What do you presently do with the grass that—I am thinking about an apartment building that is abutting railroad land and it has never been cut. It looks just awful. There must be some sites like that in North York as well. Do you have authority to enforce the cutting of grass in those areas already? Is that something you have to seek as well?

Mr. Dixon: Now, we are speaking about the untravelled part of a public highway that adjoins an apartment building?

Mr. Ruprecht: Yes.

Mr. Dixon: Typically, most property owners maintain the boulevards, the little strip of the public highway that adjoins their property.

In those situations where the property owners do not, North York presently has a system in place for cutting grass. Metro Toronto, along the fringes of the Metro roadways, has a similar program as well.

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Mr. Ruprecht: I do not want to press you any further on this. I know that you know what you are doing.

My other question was in relation to the shovelling of snow. I heard at least two or three people mention snow. I am look at this bill, Mr. Neumann. You mentioned snow too. I do not see snow in here. Since we have talked about the Snowflake Festival, I am interested in snow. Where is the snow in here?

Mr. Neumann: I made reference to the precedent, which is in the Municipal Act. One might wonder why a private property owner would be required to do something on public lands, which from a citizen's point of view, may be the city's responsibility. But the Municipal Act does permit municipalities to require property owners to clear the sidewalks of snow in the winter. Citizens do not own the sidewalks, but they are required to clear the sidewalks in front of their premises. This is kind of an extension of the same idea. The property owners are required to pick up the litter on the boulevard, as well as to cut the grass.

Mr. Ruprecht: Did you pick up on that about the snow? You mentioned the snow too.

Mr. Dixon: Yes.

Mr. Polsinelli: This is really the preamble to another advertising campaign from our able mayor Mel Lastman. As everyone knows, Toronto's winter slogan is "Be nice, clear your ice," and North York's summer slogan is going to be, "Be nice, clear your garbage."

Interjection: They could at least make it rhyme.

Mr. Chairman: It is not as good as "The city with a heart," but I understand the thrust of what you are saying.

Mr. Smith, do you have a question?

Mr. Smith: Yes. It concerns the clause that someone is going to move. It is going to be an amendment. Will it be clause (c) of section 1?

Mr. Chairman: My anticipation was that Mr. Cleary was going to be moving that, but if you want to get into a discussion about it—

Mr. Smith: If he wants to move it first, then I will ask the questions, if that is the way you want to handle it.

Mr. Chairman: I think I would kind of prefer to deal with it in that order. I have no strong feelings about it.

Mr. Smith: Do you want to move the amendment then?

Mr. Chairman: Before we get to the amendment, I do have one last question, or perhaps a comment, to deal with the point that Mr. Ruprecht raised, the railway lands. I quite agree with his comment that railway lands are frequently unsightly. My understanding is that in most cases, if not all cases, railway lands are either owned by the federal government or owned by a federally regulated corporation and therefore are ordinarily beyond the jurisdiction of bylaws. That is not to excuse the deplorable state that the railway companies inevitably leave their lands in. The point by Mr. Ruprecht was a very good one.

Having said that, before we get into the amendment, is there any other question by anybody else on the committee?

Mr. Neumann: I could perhaps just read from the part here with respect to the amendment that is going to be posed. It was a suggestion of the staff of the ministry that North York consider a provision that the municipality cut the grass at its own expense for certain classes of persons specified in the bylaw. This would enable the municipality to assist aged or disabled occupants, and I understand North York is willing to incorporate that.

Mr. Chairman: Mr. Cleary moves that subsection 1(2) of the bill be amended by adding thereto the following clause:

"(c) Despite clause (b), for providing for the cutting of grass and weeds and for the removal thereof at the expense of the municipality on private property owned or occupied by any class or classes of persons."



Mr. Smith: Maybe I am taking the opposition point of view here today, but I wonder if the municipality would agree with this amendment. I guess I only speak from my own experience, which is in smaller municipalities. The municipalities out there had the right to cut grass or weeds, but they could bill it back on the taxes to the property owner. I wonder if you feel that is taking it somewhat away from the municipality because, if I can use the term, it is just going to cost more tax dollars. The people who created the problem are not having to pay any of the cleanup. I guess I am asking you people how you would accept that amendment. Can we hear your comments on it?

Mr. Dixon: Of course, one comment would be that the amendment does not oblige North York council to pass such a bylaw. It simply leaves it open to North York council in appropriate circumstances, if it sees fit, to provide for grass-cutting or weed-cutting at its own expense.

I think frankly, once again, the analogy is to the snow-clearing sections in the Municipal Act. Certainly some municipalities that have bylaws that oblige their citizens to clear snow in front of their property go on to provide relief for elderly or handicapped persons who may not be able to themselves do that work.

Mr. Smith: But if this clause is there, you know that you will have to pay for it. The municipality will have to pay for it. You cannot bill any private property owner.

Mr. Neumann: They do have the opportunity to bill the property owner, but this simply permits them to pass a bylaw, should they so desire, to relieve certain classes of property owners from that expense.

Mr. Smith: I guess you are interpreting that somewhat differently than I. I think an individual could challenge the municipality if it tried to bill them, if this is a private bill. Anyway, that is just a matter of opinion.

Mr. Chairman: Are there any other questions by members of the committee? Perhaps then we can deal with the amendment that has been moved. All in favour? Carried.

Section 1, as amended, agreed to.

Sections 2 to 5, inclusive, agreed to.

Preamble agreed to.

Title agreed to.

Bill ordered to be reported.

#### TOWN OF OAKVILLE ACT

Consideration of Bill Pr48, An Act respecting the Town of Oakville.

Mr. Chairman: The final matter that is before us today is Bill Pr48, An Act respecting the Town of Oakville. Mr. Carrothers is the sponsor. He has been patiently waiting.

Mr. Carrothers: It was a very interesting discussion though, Mr. Chairman.

I am pleased to be introducing this bill to the committee today. I have with me Lois Payne, who is assistant solicitor with the town of Oakville. Briefly, the purpose of this bill is to allow the town of Oakville to provide tax credits to certain individuals in the town who may be having some difficulty meeting their taxes.

I think the need for this has come forward because the town went to market value assessment and the shifting in tax burden has perhaps created some difficulties. That being said, there is a compendium outlining this bill that I think each member has. Perhaps Ms. Payne could briefly take us through it and indicate what the bill will be doing.

Ms. Payne: As Mr. Carrothers has said, this proposed bill came about as a result of the town moving over to market value assessment last year. This bill would allow the town to pass bylaws in each of the next five years, which would allow a refund or credit to residential property owners of \$150 or more.

This tax credit or refund would be a uniform credit or refund, that is, it would apply to everyone who meets the criteria set out in the bill, namely those persons receiving the assistance of the Family Benefits Act, the General Welfare Assistance Act or the Old Age Security Act.

This bill has strong support from Oakville's council, and as I said, it would run for the next five years. I would be happy to answer any questions on it.

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Mr. Chairman: Perhaps, first of all, we might call on the ministry to provide a comment.

Mr. Neumann: This bill is similar to other bills which have been approved by the Legislature for municipalities, the most recent of which would be North York and Mississauga. It did generate, however, considerable discussion and response from a variety of ministries, namely Community and Social Services, Municipal Affairs and the Attorney General.

I guess what is new is the implementation of the Charter of Rights. There were some suggested changes from the Ministry of the Attorney General to assist Oakville in having a bylaw in legislation which is in keeping with the spirit of the Charter of Rights in not discriminating among people in need. These amendments which were suggested have all been incorporated into the bill. There was quite a bit of dialogue and co-operation among the various ministries and with the officials of the town of Oakville. At this point we are prepared to indicate support for the legislation.

I point out one aspect which I noticed in reviewing the bill; that is, while there is considerable documentation here relating to the impact of market value assessment upon the town of Oakville and various properties and property owners, the bill itself does not directly relate to that. It just happens to be the issue which prompted Oakville to provide relief for low-income people and people in need in paying property taxes, but the relief would apply to people whether their assessments went down or up.

Initially, as I understand from reading the documentation, the town of Oakville was seeking a way of assisting only those people whose taxes had increased 30 per cent because of market value assessment, but the bill itself assists everyone equally.



Mr. Chairman: Are there questions by members of the committee? I have a few. I just went, "Very interesting." I guess what I am searching for is just to be sure I understand how Oakville is going to interpret this bill if it is passed.

If a person is a recipient of payments, under clause 2(a), of family benefits, general welfare or old age security for one day in the year, he gets the credit as if he were a beneficiary of those payments for every day of the year. Is that correct?

Ms. Payne: That is correct.

Mr. Chairman: If a person was a winner under the tax changes that took place with market value assessment—in other words, his net tax situation improved—he would get the same benefit as somebody who was a loser under that change.

Ms. Payne: That is exactly right, but that person would still have to qualify under clause (a).

Mr. Chairman: Right. The same class of people, in other words.

I take it there is no discretion in the hands of the council. If somebody qualifies, that is it, he qualifies.

Ms. Payne: That is it.

Mr. Chairman: They can get it retroactively. If they do not ask for it, for up to three years, they can still go back to council and ask for it.

Ms. Payne: Starting in 1988, that is correct, yes.

Mr. Chairman: I am not quite sure what paragraph 3.3 means: "A credit shall be allowed for municipal taxes imposed on any real property only on payment of the remaining portion of such municipal taxes."

What does that mean?

Ms. Payne: That would mean that the person would have to pay the taxes due in order to receive his or her credit or refund.

Mr. Chairman: Why?

Ms. Payne: We want to make sure that the taxes are paid before we are giving credits or refunds.

Mr. Chairman: Why would you not just say, "You can pay me X dollars minus \$150"?

Ms. Payne: That is exactly the intent, that the remaining portion after the credit or refund be taken out of the total tax bill.

Mr. Chairman: I see now what the wording is supposed to say. Now I have to figure out if that is really what it does say. I was quite confused, frankly, when I read that particular provision.

Mr. Smith: Why would you bring this bill forward? What has been the problem in the past? Has this ever been done before?

Ms. Payne: It has not been done by the town. It has been done by other municipalities, yes.

Mr. Smith: In many cases? In many cities?

Ms. Payne: I am aware of two. I am aware of North York and Mississauga. There may be several others.

Mr. Smith: What was their reason for doing it in the first place?

Ms. Payne: I believe it was also a shift to market value assessment that provided the impetus to implement this.

Mr. Smith: It was a burden on this particular group of people?

Ms. Payne: That is correct.

Mr. Smith: You are just trying to lessen that burden on them?

Ms. Payne: That is correct, yes.

Mr. Neumann: Perhaps I could add that East York, Toronto, Hamilton, Burlington, North York, Peterborough and Preston have bylaws that provide tax credits to seniors. North York and Mississauga provide them to seniors and the disabled. Those are the precedents.

This bill has some provisions in it which are not in those other bills, as I explained, relating to the Charter of Rights.

I do have a question, if I may. I would like to know whether the town of Oakville, in implementing market value assessment, utilized the provision for phasing-in. I believe municipalities are allowed to phase in the increases.

Ms. Payne: I do not believe that Oakville has phased in the increase, no. There was discussion about that and the decision was not to do that.

Mr. Neumann: We are supportive of this bill, but I was just curious why you chose this route rather than the alternative of phasing in the increases over a three-year period.

Ms. Payne: I believe it was a political decision.

Mr. Neumann: A political decision of the council.

Mr. Chairman: Let me ask another question that pertains to the qualification of individuals to get this credit. The definition of somebody who is poor, I guess, is essentially that they are receiving certain types of payments. The definition of whether they are seniors is again whether they are receiving certain types of payments.

Ms. Payne: Yes.

Mr. Chairman: In the City of Mississauga Act, which is in the materials, it has the additional classification that Mr. Neumann just mentioned about being handicapped and receiving certain types of payments. Why did they get left out of the Oakville bill?



Ms. Payne: Actually, in the Mississauga and North York legislation, the two criteria are there. Those persons would have to be disabled and receiving the benefits. We have broadened it so that it would be all persons receiving those benefits, including the disabled.

Mr. Chairman: I see. Yes, you are quite right. It is broader and better.

Ms. Payne: One thing I might add, which I did not mention in the beginning, is that these credits or refunds will be registered against the real property in respect of which the taxes are payable as a lien, which will then be repayable to the municipality upon certain changes in ownership.

Mr. Chairman: That is sections 7 and 8. Is that right?

Ms. Payne: That is right, yes, section 7.

Mr. Smith: You are only permitted to put a lien against the property if that person did not pay all of their taxes?

Ms. Payne: No sir. We would be registering a lien in all cases where the credit or refund is given.

Mr. Smith: Well, I thought the chairman said that somebody could go in and write a cheque for the amount of taxes, less \$150. So why would you register a lien against the property then?

Ms. Payne: The lien is then for the \$150 credit that person would be given to be repaid to the municipality upon the change in ownership.

Mr. Smith: So you are saying, when the sale of property takes place, you are going to get the money back out of the estate or proceeds or whatever.

Ms. Payne: From the new owner. That is right, yes.

Mr. Smith: So, in fact you are not really giving them anything?

Ms. Payne: We are giving them something. We are giving them, I believe, the benefit of \$150 or more per year. Then they do not have to worry about the repayment of that until the ownership of the property changes, because it is a lien against the property.

Mr. Smith: I am getting it clear now. I have seen a somewhat similar deal and I guess it is a little bit like legal aid. If you have anything, they put a lien on your property, so you do not get it for nothing. But someone else who has absolutely nothing, may get legal aid for nothing. In this case here, you still have to pay back the credit you were offered in the first place, at some time or other, or somehow or other. But, anyway, maybe the rest all understand it beautifully. It is not really a handout. It keeps them there on the property with a little help, I suppose.

Mr. Chairman: Mr. Neumann. Sorry, did you have another comment?

Mr. Smith: No. All of these people are experts.

Mr. Neumann: I do not see any provision in the bill for you to charge interest on that \$150 per year.

Ms. Payne: That is correct.

Mr. Newuman: So, in effect, what you are giving them, is an interest free loan each year of \$150 to be repaid in one lump sum when the property changes hands.

Ms. Payne: That is correct.

Mr. Chairman: How much does it cost you to put a lien on for \$150?

Ms. Payne: I believe it would cost \$15 to register that.

Mr. Chairman: What is your practical cost? Do you have to search the title, or dig up from your records the legal title? You have to prepare the document—some document is going to have to be prepared in registerable form, and probably duplicated, at a minimum. Then somebody has to go across and register it and pay \$15. So what is your practical cost of doing that?

Ms. Payne: I guess it would be about \$50.

Mr. Chairman: I guess the answer is politics.

Mr. Smith: Lawyers must be working cheaper in Oakville than they are in London.

Mr. Chairman: If you can do it for \$50 internally, you are doing it pretty well. Are there any other questions by members of the committee?

Sections 1 to 10, inclusive, agreed to.

Preamble agreed to.

Title agreed to.

Bill ordered to be reported.

Mr. Chairman: That completes everything on the agenda and, there being no other questions from members of the committee, thank you very much. See you next week.

The committee adjourned at 11:25 a.m.





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STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

PRIMROCK MINING AND EXPLORATION LIMITED ACT

BROCKVILLE ROWING CLUB INCORPORATED ACT

VIC JOHNSTON COMMUNITY CENTRE INC. ACT

OWEN SOUND YOUNG MEN'S AND YOUNG WOMEN'S CHRISTIAN ASSOCIATION ACT

INCORPORATED SYNOD OF THE DIOCESE OF HURON ACT

WEDNESDAY, JUNE 8, 1988



STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

CHAIRMAN: Fleet, David (High Park-Swansea L)

VICE-CHAIRMAN: Beer, Charles (York North L)

Cleary, John C. (Cornwall L)

Fawcett, Joan M. (Northumberland L)

McCague, George R. (Simcoe West PC)

Pollock, Jim (Hastings-Peterborough PC)

Pouliot, Gilles (Lake Nipigon NDP)

Ruprecht, Tony (Parkdale L)

Smith, David W. (Lambton L)

Sola, John (Mississauga East L)

Swart, Mel (Welland-Thorold NDP)

Substitutions:

Ballinger, William G. (Durham-York L) for Mrs. Fawcett

Carrothers, Douglas A. (Oakville South L) for Mr. Sola

Epp, Herbert A. (Waterloo North L) for Mr. Cleary

Miclash, Frank (Kenora L) for Mr. D. W. Smith

Also taking part:

Ballinger, William G. (Durham-York L)

Cunningham, Dianne E. (London North PC)

Henderson, D. James (Etobicoke-Humber L)

Offer, Steven (Mississauga North L)

Runciman, Robert W. (Leeds-Grenville PC)

Clerk: Manikel, Tannis

Staff:

Klein, Susan, Legislative Counsel

Mifsud, Lucinda, Legislative Counsel

Witnesses:

From the Ministry of Northern Development and Mines:

Campbell, Sterling, Parliamentary Assistant to the Minister of Mines  
(Sudbury L)

From the Ministry of Consumer and Commercial Relations:

Levine, Katherine, Solicitor, Companies Branch

From Primrock Mining and Exploration Ltd.:

Gallo, Daniel, Legal Counsel

From Brockville Rowing Club Inc.:

Swayne, Don, Past President and Director

Marshal, Doug, Head Coach and Director

From the Vic Johnston Community Centre Inc.:

Stabins, Andrew, Legal Counsel

Bentley, George, Secretary

From the Owen Sound Young Men's and Young Women's Christian Association:

Haddock, John, Executive Director

From the Incorporated Synod of the Diocese of Huron:

Adams, Stephen N., Legal Counsel

Chovaz, Albert E., Archdeacon

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Wednesday, June 8, 1988

The committee met at 10:09 a.m. in committee room 1.

Mr. Chairman: I see a quorum. It is apparent to me that there are items on the list for which the sponsoring member is not yet here, but we will proceed in order. Where the sponsoring member or a substitute for that person is not here, we will proceed to the next item.

The first matter listed on the agenda is Bill Pr35, An Act to revive Primrock Mining and Exploration Limited, with Mr. Henderson.

PRIMROCK MINING AND EXPLORATION LIMITED ACT

Consideration of Bill Pr35, An Act to revise Primrock Mining and Exploration Limited.

Mr. Chairman: Are any representatives here on that matter? OK. Mr. Henderson is not here. Perhaps we could just have the two of you introduce yourselves and then we can proceed.

Mr. Gallo: My name is Daniel Gallo. This is John Rapski.

Mr. Chairman: The procedure here is for you to give an explanation briefly—and I stress briefly—to the members of the committee. There may be commentary by members of the Legislature who represent the government here, and subsequently questions by members of the committee. You will have an opportunity to reply to any comments that would be made in that regard.

If you could simply indicate the purpose of the bill, in a brief form, so that we have on the record the reasons why you are seeking a revival. Perhaps you could introduce the gentleman with you.

Mr. Gallo: This is John Rapski. He is involved in the mineral exploration business.

I have several copies here of a note to the committee from a registered shareholder which I think sums up very briefly and very accurately the reasons for the revival. I will pass this out.

Mr. Chairman: I believe members are being given the documentation now. Is this the one entitled, Sleeping Children Around the World?

Mr. Gallo: That is correct.

Mr. Chairman: All right. Very briefly, please put on the record why you are reviving the corporation.

Mr. Gallo: Basically, the illness and subsequent untimely death of my father, along with the original prospector for this property, led to its dissolution. At this time, on behalf of the shareholders, I am very interested in reviving and bringing the company back into corporate existence.



Mr. Chairman: Are there any comments from representatives of the government?

Ms. Levine: We do not have any objection. The corporation was cancelled for default in complying with the Securities Act. I would think that you are now in compliance. Is that right?

Mr. Gallo: Yes. Basically, due to financial difficulties in the early 1970s, the necessary quarterly reporting to the Ministry of Revenue, as well as under the securities' rules, had fallen out of sync. The quarterly reporting had not been done.

I have since engaged the services of a chartered accountancy firm and we have filed our last 17 years of financial statements, along with the back corporation tax. We are prepared to keep the corporate charter in good stead.

Mr. Chairman: Are there any questions by members of the committee?

Mr. Epp: My only concern is that this not happen again. I fail to see why these things happen the first time if you have proper professional advice and if you are conscientious about getting these things in. Obviously, you were not in charge. Now you are, and now your intentions are good with regard to keeping this up to date.

Mr. Chairman: There being no further questions, Mr. Ballinger moves that we carry sections 1, 2 and 3.

Sections 1 to 3, inclusive, agreed to.

Mr. Chairman: I understand there is going to be a motion moved with respect to the preamble. Are the applicants aware of this?

Mr. Gallo: Yes, I am. I suppose I confused the dates of notice of cancellation. I think we are referring to "March 1975" being deleted and "March 1976" being inserted.

Mr. Chairman: That is right.

Mr. Gallo: Yes, it was just confusion on my part because I had looked at the original notice from the ministry and I took it on the wrong date.

Mr. Chairman: Okay. Thank you very much. Just for the record, it is moved that the preamble of the bill be amended by striking out "the 15th day of March 1975" in the fifth and sixth lines and inserting in lieu thereof "the 16th day of March 1976."

Motion agreed to.

Preamble, as amended, agreed to.

Title agreed to.

Bill, as amended, ordered to be reported.

Mr. Epp: Before we proceed, I know in the past sometimes the cost of advertising and all these kinds of things come up. Is there anything of that nature that should be discussed at this time, or is there anything associated with it?

Mr. Chairman: Generally speaking, that is done with charitable organizations as opposed to a for-profit operation, and that is something that can be dealt with as part of the motions when we are passing a bill. I realize one or two items are possibly going to fall in that category today.

The next item is Bill Pr46. Mr. Runciman is the sponsor.

BROCKVILLE ROWING CLUB INCORPORATED ACT

Consideration of Bill Pr46, An Act respecting The Brockville Rowing Club Incorporated.

Mr. Ballinger: I move we adjourn.

Mr. Chairman: It is a nondebatable motion.

Mr. Runciman, perhaps you can introduce the gentlemen who are with you and give us a brief indication of the purpose of the bill. Then we can proceed in the ordinary course.

Mr. Runciman: On my immediate right is Don Swayne, who is the past-president and the current vice-president of the Brockville Rowing Club. On my far right is Doug Marshal, who is the corporate secretary of the club and is also the head coach and has been the head coach for as long as I can remember.

Essentially, the bill is allowing the corporation of the city of Brockville to pass bylaws exempting the club from taxes for municipal and school purposes other than for local improvements.

This bill was initially brought to the committee back in 1983. At that time, the committee indicated it was prepared to support the club if it could secure a charitable tax number and become a registered charity under the Income Tax Act. Over the intervening period of years, that application has slowly wended its way through the federal bureaucracy and, indeed, the club has received a charitable tax number.

The Brockville Rowing Club is something of an institution, not just in the Ontario region but throughout North America. Many of the Brockville scullers have rowed throughout the world, in the Olympics and certainly in the Royal Henley in England. Not only has the Brockville Rowing Club developed many quality scullers, but also it has generated individuals who have started other rowing clubs across Canada. We have a number of graduates of the Brockville Rowing Club who have actually started rowing clubs and are coaching right across Canada. It is an organization that goes back to the 1840s.

It also provides numerous community services within Brockville, services that would otherwise have to be assumed by the municipality.

I want to indicate to the members of the committee that this bill, on the initiative of the Brockville Rowing Club, has been endorsed on two occasions unanimously by Brockville city council. There is complete community support for this legislation.

The members of the club are here to answer any questions.

Mr. Chairman: Thank you very much. I will call on representatives of the government, starting with Mr. Campbell.



1020

Mr. Campbell: I am representing Mr. Neumann, who is ill today, from the Ministry of Municipal Affairs.

I think the member alluded to the fact that it had been started in 1983 and I think there is a motion to be moved, that section 2 be amended by striking out "1983" in the second line and inserting "1987" to reflect the current status of the charitable exemption that you enjoy.

I would also like to bring to your attention that the Ministry of the Treasury would like to have its concerns noted regarding the potential that provincial grants will provide some compensation for the assessment loss created by the granting of a private bill exemption. It is a caution that I think that the Ministry of the Treasury wants to make everybody aware of in deliberation of these matters. That is all I have.

Mr. Chairman: Are there any questions by any members of the committee?

Mr. Ballinger: Since I am sponsoring a similar bill later on, I am more than pleased to support this.

Mr. McCague: It does not work that way.

Mr. Chairman: Mr. Epp moves that section 1 carry.

Section 1 agreed to.

Mr. Chairman: Mr. Miclash moves that section 2 of the bill be amended by striking out "1983" in the second line and insert in lieu thereof "1987."

Motion agreed to.

Section 2, as amended, agreed to.

Sections 3 and 4 agreed to

Preamble agreed to.

Schedule agreed to.

Title agreed to.

Bill, as amended, ordered to be reported.

Mr. Chairman: Mr. Ballinger moves that the committee recommend that the fees plus the actual cost of printing be remitted on Bill Pr46, An Act respecting The Brockville Rowing Club Incorporated.

Motion agreed to.

Mr. Chairman: Thank you very much and keep on rowing.

Mr. Runciman: I will make sure that I substitute on the committee when Mr. Ballinger's bill is before you.

Mr. Ballinger: You will not have wait long; just sit down.

VIC JOHNSTON COMMUNITY CENTRE INCORPORATED ACT

Consideration of Bill Pr33, An Act to revive The Vic Johnston Community Centre Inc.

Mr. Chairman: There is at least one representative here; Mr. Offer is not. Are you prepared to proceed in any event? Please pull up a seat with all who are involved. Perhaps you could introduce yourselves to the committee—I think you have seen the procedure—and give us a brief explanation of your bill.

Mr. Stabins: My name is Andrew Stabins. I am a solicitor for Vic Johnston Community Centre Inc. The gentleman to the right of me is George Bentley, who is the secretary of the corporation.

The Vic Johnston Community Centre was incorporated as the Streetsville and District Community Centre in 1961 for the basic purpose of raising money in the community to construct an arena and community centre on lands leased from the municipality. An arena was constructed, a community hall was constructed and they are still there and in operation. It is also the home of a Junior B hockey team.

The corporation is administered by a voluntary board, an unpaid board of directors, and the notices under the Corporations Information Act that are generally sent out to, I presume, purge the lists of inactive corporations, were sent out to a secretary, not Mr. Bentley, who had moved from Brampton, and the notices were not filled out and in due course the charter was cancelled. The city of Mississauga brought to our attention, when we were negotiating a new lease on the lands, that the corporation did not in fact exist. That is why we are here, requesting a private bill to revive it.

Mr. Chairman: Are there any comments or questions from representatives of the government?

Ms. Levine: I am not sure if a notice has been filed under the Corporations Information Act as yet. That is a notice that sets out the directors and officers. Have you done that?

Mr. Stabins: Yes, I have done that. I believe I filed about six of them for the years from 1981 on, so they should be up to date.

Ms. Levine: Oh, that is good.

Mr. Chairman: Shall sections 1, 2 and 3 carry?

Section 1 to 3, inclusive, agreed to.

Preamble agreed to.

Title agreed to.

Bill ordered to be reported.

Mr. Chairman: This is a nonprofit corporation but it is not a charitable corporation, is that right?



Mr. Stabins: I believe so. We do not have a charity number for it; it is a nonprofit corporation.

Mr. Haggerty: The committee has a letter from the Ministry of Revenue on this particular matter, making reference to your question. This is from T. M. Russell, deputy minister: "In reply to your memorandum dated December 2, 1987, we wish to advise that the Vic Johnston Community Centre is a nonprofit, nonshare-capital organization and is, therefore, exempt from corporations tax. As a result, this ministry has no objection to the revival of the centre."

Mr. Chairman: Thank you very much. There being no other comments or questions, gentlemen, thank you very much.

#### OWEN SOUND YOUNG MEN'S AND YOUNG WOMEN'S CHRISTIAN ASSOCIATION ACT

Consideration of Bill Pr45, An Act respecting the Owen Sound Young Men's and Young Women's Christian Association.

Mr. Chairman: Ordinarily, Mr. Lipsett would be appearing, but today Mr. Ballinger is appearing on his behalf. Mr. Ballinger, we invite you to introduce the two gentlemen with you.

Mr. Ballinger: Mr. Chairman and members of the committee, as you are aware, I am substituting today for Mr. Lipsett, who unfortunately is not here; he is on other committee business. I would like to introduce John Haddock, to my immediate right, who is the executive director of the YM/YWCA of Owen Sound, and the youth director, Nick Meloche.

This is exactly the same as the request from Mr. Runciman as it relates a bill to be exempted from the real property as it relates to the YM/YWCA in Owen Sound. There are no objections; the municipality is in support and the school board is in support.

Mr. Epp: If the ministry has no objection, I would be glad to make a motion.

Mr. Chairman: Are there any comments?

Mr. Campbell: If I might, Mr. Chairman, again there is a concern from the Ministry of Municipal Affairs on future land acquisitions by the corporation for purposes set out in the preamble; that is why we have indicated a proposed amendment to subsection 1(1) of the bill, that it be amended by striking out "together with any future land acquired by the corporation for the purposes set out in the preamble" in the sixth and seventh lines.

I understand that the ministry has communicated with the applicants and that would be a recommended course of action. The other thing, again, is that the Ministry of the Treasury would like to have its concerns noted regarding the potential loss that provincial grants will provide some compensation for the assessment loss created by the granting of a private bill exemption. That is all we have.

Mr. Chairman: Are the applicants agreeable to the amendment?

Mr. Haddock: Yes.

Mr. Chairman: Are there any comments or questions by the members of the committee?

Mr. Epp: Mr. Chairman, I would be pleased to move the bill and also move the amendment. I will read the amendment into the record. I move that subsection 1(1) of the bill be amended by striking out "together with any future land acquired by the corporation for the purposes set out in the preamble" in the sixth and seventh lines.

Motion agreed to.

Mr. Chairman: Mr. Epp also moves that section 1, as amended, sections 2, 3 and 4, the preamble, schedule, title and bill be carried.

Section 1, as amended, agreed to.

Sections 2 to 4, inclusive, agreed to.

Preamble agreed to.

Schedule agreed to.

Title agreed to.

Bill, as amended, ordered to be reported.

1030

Mr. McCague: Mr. Chairman, I move that the committee recommend that the fees, less the actual cost of printing, be remitted on Bill Pr45, An Act respecting the Owen Sound Young Men's and Young Women's Christian Association.

Motion agreed to.

Mr. McCague: I think what that says is that you do not pay any fees. A lawyer must have written this.

Mr. Fleet: I have no pride of authorship in that particular motion.

Mr. McCague: Tell me someday what it means, would you please?

Mr. Chairman: Mr. Ballinger, it was very efficient and very well done.

Mr. Ballinger: It is always a pleasure doing business with you folks.

#### INCORPORATED SYNOD OF THE DIOCESE OF HURON ACT

Consideration of Bill Pr51, An Act respecting The Incorporated Synod of the Diocese of Huron.

Mr. Chairman: The last item today is Bill Pr51. Mrs. Cunningham is the sponsor. Please introduce the two gentlemen who are with you.

Mrs. Cunningham: It is a pleasure to be here this morning with the synod. I would like to introduce Archdeacon Chovaz, who is also the secretary-treasurer of the synod, and Stephen Adams, the solicitor for the applicant, who will do the presentation.



Mr. Adams: The Anglican Church of Canada's diocese of Huron runs approximately from Kitchener to Windsor and from Lake Erie up to Tobermory. There are about 12,000 square miles in that area and about 70,000 members of the Anglican Church of Canada attending 159 parishes administered to by approximately 120 clergy.

The investment powers of the diocese are set out in this 1874 act of incorporation, as amended in 1970. It is presently required to invest not less than 80 per cent of the book value of the funds it holds in trust in a limited number of investments, primarily government securities and mortgages.

The diocese seeks wider investment powers to permit it to invest the funds it holds in trust in those securities authorized by law for trustees. This will, it is hoped, permit some capital appreciation in the years to come.

There are approximately 1,100 separate trust funds administered by the diocese in trust for various parishes and other church organizations. The effect of the change, if it is approved, would be to permit the diocese to invest up to 35 per cent of the market value of trust funds in a broader class of investments, including bonds, debentures, preferred shares and common shares of corporations that have established earning records.

The secretary of the diocese, Archdeacon Chovaz, will be happy to give you further information.

Mr. Chairman: Are there any comments from representatives of the government? Any questions by members of the committee?

Mr. Pollock: Has this been done before? I am new on the committee. Is this common practice?

Mr. Adams: Yes, sir. I believe that the diocese of Toronto and the diocese of Niagara both have the power to invest in those investments authorized by lawful trustees. That is my understanding.

Mr. Chairman: The chairman has a couple of questions.

Mr. Ballinger: How long is it going to take?

Mr. Chairman: Not long. This lawyer is efficient.

I guess the question I have is just to put on the record the element of consultation that is taking place internally because I take it that is the only other interested party. If you are making a change to expand the powers of the trustees, in effect, which is what the organization is functioning as, can you just give some indication of the acceptability of the change? One of the purposes of this committee is to hear if there are any objections. The only objections that would ever occur would be, presumably, internal to the church.

Mr. Adams: Yes. The synod has an annual meeting which representatives of all parishes attend and all the clergy attend. This was approved by a unanimous vote of the synod that we would apply for this legislation.

Mr. Chairman: Thank you. That satisfied my question. Was that quick enough, Mr. Ballinger?

Mr. Ballinger: Absolutely, Mr. Chairman.

Sections 1 to 3, inclusive, agreed to.

Preamble agreed to.

Title agreed to.

Mr. McCague: I move that the committee recommend that the fees less the actual cost of printing be remitted on Bill Pr51, An Act respecting The Incorporated Synod of the Diocese of Huron.

Motion agreed to.

Bill ordered to be reported.

Mr. Chairman: Thank you very much.

Mrs. Cunningham: Thank you.

Mr. Chairman: You are quite welcome, Mrs. Cunningham. We are pleased to have you here.

That concludes the matters listed on the agenda for today. You like that? You are all done.

Mr. Ballinger: I love this committee.

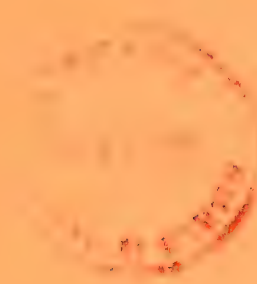
The committee adjourned at 10:36 a.m.





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STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

CITY OF TORONTO ACT  
TOWN OF MARKHAM ACT  
CITY OF ETOBICOKE ACT  
CITY OF TRENTON ACT

WEDNESDAY, JUNE 15, 1988



STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

CHAIRMAN: Fleet, David (High Park-Swansea L)

VICE-CHAIRMAN: Beer, Charles (York North L)

Cleary, John C. (Cornwall L)

Fawcett, Joan M. (Northumberland L)

McCague, George R. (Simcoe West PC)

Pollock, Jim (Hastings-Peterborough PC)

Pouliot, Gilles (Lake Nipigon NDP)

Ruprecht, Tony (Parkdale L)

Smith, David W. (Lambton L)

Sola, John (Mississauga East L)

Swart, Mel (Welland-Thorold NDP)

Substitutions:

Collins, Shirley (Wentworth East L) for Mr. Smith

Grier, Ruth A. (Etobicoke-Lakeshore NDP) for Mr. Pouliot

Kozyra, Taras B. (Port Arthur L) for Mr. Cleary

Philip, Ed (Etobicoke-Rexdale NDP) for Mr. Swart

Sterling, Norman W. (Carleton PC) for Mr. McCague

Also taking part:

Cousens, W. Donald (Markham PC)

Henderson, D. James (Etobicoke-Humber L)

Kanter, Ron (St. Andrew-St. Patrick L)

Clerk: Manikel, Tannis

Staff:

Klein, Susan, Legislative Counsel

Mifsud, Lucinda, Legislative Counsel

Witnesses:

From the Ministry of Municipal Affairs:

Neumann, David E., Parliamentary Assistant to the Minister of Municipal  
Affairs (Brantford L)

Chipman, John G., General Counsel, Municipal Affairs

From the City of Toronto:

Foran, Patricia, Deputy City Solicitor

Disero, Betty, Alderman

Prinold, Denis, Chairman, Pension Committee, Canadian Union of Public  
Employees, Local 79

From the Town of Markham:

Kallio, Ray O., Town Solicitor

From the City of Etobicoke:

Robertson, David, Councillor, Ward 5

Ketcheson, Bruce C., Legal Counsel; with Reble, Ritchie

From the Non-Smokers' Rights Association:

Mahood, Garfield, Executive Director

From the City of Trenton:

Reynolds, Robert J., Legal Counsel; with Reynolds, Hunter

Individual Presentation:

Bonn, George W., Legal Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Wednesday, June 15, 1988

The committee met at 10:16 a.m. in committee room 1.

Mr. Chairman: I call this committee meeting to order. We have a larger-than-usual crowd before us today, so I will give you a little bit of an explanation of how the procedure will take place. Mr. Kanter, who is the sponsor for Bill Pr16, An Act respecting the City of Toronto, has very kindly and politely suggested that perhaps Bill Pr20 and then Bill Pr52 precede the one he is sponsoring. I suspect that will assist a greater number of people in leaving.

I now get a winced look on Mr. Kanter's face.

Mr. Kanter: That is not actually what I suggested. What I suggested was that we deal with the first two items in our bill, the first two clauses of the bill.

Mr. Chairman: I am sorry. My apology.

Mr. Sola: Nice try.

Mr. Chairman: I tried to help some others, not meaning to put you on the spot, Mr. Kanter.

Mr. Kanter: You did, but I—

Mr. Chairman: OK. Well then, that will take us back to Bill Pr16. Just so everyone is aware, the procedure will be to call for the proponents of the bill with the sponsor. They will give an explanation. There may well be questions come from members of the committee. Representatives of the government will also invariably make some comment, although it may be very brief.

Following that, if there is anybody who is an opponent to a bill, then he will have an opportunity to go through the same process. They will get to give their views and be subject to any questions that may be raised. At this moment in time, the only one I am aware of is on the last one, Pr40. In any event, I will call for people in each case. At the time we call each bill, I will try to find out if there is anybody in the room who seeks to give a differing view.

That having been said, perhaps we can deal with Bill Pr16.

CITY OF TORONTO ACT

Consideration of Bill Pr16, An Act respecting the City of Toronto.

Mr. Kanter: Mr. Chairman and members of the committee, this is An Act respecting the City of Toronto. There are three sections, but they deal with two issues. I would like to deal first with sections 1 and 2, which both deal with pension issues. The first section would clarify and expand the powers and duties of the committees which administer the corporation's pension



plans and the second section would enable the corporation to permit employees or former employees to accrue service credits for pension purposes.

The deputy city solicitor, Pat Foran, is here to speak to the bill. I believe it is largely technical in nature. There are a great number of people here in support of these two clauses. I am not aware of any opposition or controversy regarding these two sections.

Mr. Philip: I notice that there are representatives of the union here and I wonder if we can hear from the union as to whether there are any objections.

Mr. Chairman: I am certainly willing to do that, but I would like to do it in the order I indicated. We will hear from proponents and then any opponents, whether from the union or any other group.

Mr. Kanter: Perhaps following the deputy city solicitor's comments, we might call upon one of the other representatives.

Mr. Chairman: I am quite willing to do it topic by topic rather than do all of the issues in Bill Pr16. I think that is what Mr. Kanter was aiming at earlier.

Ms. Foran: Dealing first with section 1, prior to July 1968 employees of the city of Toronto belonged to one of two city-sponsored pension plans, namely, the Toronto civic employees' pension and benefit plan and the Toronto fire department superannuation and benefit plan. These plans were established either by special legislation or by bylaws that were subsequently ratified by special legislation.

The civic plan dates back to 1921 and in fact the fire plan dates back to 1891, so they have been in existence for a long time. Both plans continue to exist for all employees who started with the city before July 1, 1968. After July 1, 1968 all new employees became members of the Ontario municipal employees retirement system.

#### 1020

The two city plans are administered by pension committees. Those pension committees are bound to act in accordance with the special legislation as well as general legislation and the common law. Both plans have been closed since 1968, that is, they have had no new members since that time. Consequently over the next few years, most if not all the current members of the plan will be retired. Therefore the city feels it very important that we strengthen the powers of the committees so as to ensure that the committees be financially able to meet their commitments to the retired pensioners.

Basically, what the city wants to do is to ensure that the plans are run in the same manner as the OMERS plan is run or as any other pension plan in the province is run, and in a manner which is consistent with good management in the 1980s and 1990s. These plans are very old and therefore they did not have all the same parts that the OMERS plans and other newer plans in the province have. Basically the city wants to eliminate certain common law requirements. They want to be able to delegate investment decisions to any person or body and to pay certain expenses out of the fund.

This has been a long process with the city. We hired a consultant to determine in what way the committees should be strengthened. These amendments

come out of the recommendations from the committee. The purpose of the requested legislation is to enable these two pension committees to function in a manner similar to the Ontario Municipal Employees Retirement Board and other pension bodies in the province.

That is basically all I have to say about it.

Mr. Chairman: Is there any comment from a representative of the government?

Mr. Kanter: I think we should hear from the representative from the union. Perhaps this might be an appropriate time. Would that be satisfactory?

Mr. Chairman: I would like to hear the government's position, whether they have an objection and then go from there.

Mr. Neumann: We have circulated this to all the appropriate ministries and there are no objections from the government to this request for private legislation.

Mr. Chairman: Are there any questions from members of the committee to the city at this time?

Mr. Philip: I have one question. Would there be anyone who is a member of either of these plans who would be in any way disadvantaged by this amalgamation?

Ms. Foran: Our position is no, because the sole purpose of this legislation would be to enable the committee to increase the investment powers of the committee, thereby hopefully increasing the funds available to pay pensions in the future when there are no active members in the plans. We have several people here who are pensioners or who are members of the various committees to speak in favour of it if the committee so wishes.

Mr. Chairman: Is there a representative of the union who wants to make a statement at this point?

Mr. Prinold: Thank you for giving me just a few seconds to speak.

Mr. Chairman: We will give you more than a few seconds, but perhaps you can introduce yourself.

Mr. Prinold: I am Denis Prinold, the representative of Local 79, the pension committee. Actually this morning I feel I can also speak on behalf of Local 43, the outside workers, whose member would have been here but for illness. We have worked together on the civic committee for a number of years.

As the deputy solicitor says, our committee has been very unique and the city fund has been administered extremely well by the city of Toronto. The employees have been very well served over the years. This matter has been brought about, as the deputy solicitor says, so that our investments can be improved, so that we can get the same rate of return as the OMERS investments get and so we can have the same kind of benefits. It is only fair to go that route. I support this particular motion in every respect.

The city of Toronto has had this joint committee of the union and management. Over the last few years we have actually incorporated retirees into the committee. This is a very important thing. As a closed fund, as the



deputy solicitor has said, it means that fewer and fewer employees will be employed and there will be more and more retirees.

The structure of the committee is being looked after continuously. I have full confidence in what has gone on. The committee has been very unique and I think very responsible. The corporation has to some extent, with arm twisting, made the improvements the employees have asked for over the years, which we have been very pleased with.

Mr. Chairman: Are there any other questions by members of the committee? There not being any, what I might suggest is that we might have a motion to carry sections 1 and 2 of the bill. Mr. Sola moves sections 1 and 2 of the bill.

Motion agreed to.

Mr. Chairman: That disposes of that portion. Those people who are here on a pension issue are free to stay to watch the proceedings, but they are certainly not obliged to. Thank you very much.

Mr. Kanter: I am sure they will appreciate that these two sections were passed by this committee, will go on to the House and will almost certainly be adopted. But they were passed by the committee.

Mr. Chairman: That is a fair statement.

Ms. Collins: Will we be doing anything about the amendments to the bill?

Mr. Chairman: The amendments are going to come under the other sections. Then we can deal with them as they arise.

Perhaps, Mr. Kanter or Ms. Foran, you would deal with the remainder of Bill Pr16, please.

Mr. Kanter: Just to introduce it, this deals with an amendment to a local option provision dealing with the Liquor Licence Act in part of west Toronto, something that members are quite familiar with, I am sure, at least in terms of concept.

I think this one should be less contentious than other local option matters, but we will leave this in the hands of the committee and Ms. Foran can explain the details of section 3.

Ms. Foran: By virtue of the City of Toronto Act, 1909, the city of West Toronto was annexed to the city of Toronto. One of the provisions of the 1909 legislation was that bylaw 551 of the city of West Toronto prohibiting the sale of liquor by retail in the city of West Toronto would remain in force until such bylaw was repealed by a majority of the electors on a question submitted in accordance with the Liquor Licence Act.

Consequently, there are parts of the city of Toronto, now found in existing wards 1 and 3, which are dry. All the proposed legislation would do would be to enable the city to hold a separate plebiscite in ward 3 from that in ward 1, or to hold a plebiscite in ward 1 and not in ward 3 and vice versa.

There would be no change to section 26 of the Liquor Licence Act. I should point out, however, that in the interim between the time the city

applied for this legislation and today, Bill 29, the Municipality of Metropolitan Toronto Amendment Act, was passed, dealing with the restructuring of the metropolitan boundaries in the city of Toronto.

The part of the city of Toronto which was formerly the city of West Toronto will after December 1, 1988 be found in three local wards, as defined in the Municipality of Metropolitan Toronto act and regulations, rather than in two wards. I am therefore instructed by the council to ask that section 3 be amended so as to permit the placing of a question in each or all of the areas in those three proposed local wards, which were formerly part of the city of West Toronto.

The proposed legislation recognizes the fact that the former city of West Toronto, as it existed in 1909, is no longer one separate and distinct entity, but rather, each of the local wards which contain part of the former city of West Toronto are separate and distinct areas. Each of these local wards has different issues and concerns, based not only on the geographic separations which make up the ward boundaries, but also on the social and physical character of the neighbourhoods within each of the local wards.

The concerns of the residents in one local ward are not necessarily the same concerns of the residents of the other two local wards. It is for that reason that city council feels it essential that the legislation should be granted so that if the residents of one or more of the local wards wish to vote on the issue, they can do so without having the question referred to all of the residents in the geographic boundaries of the former city.

The issue will then be decided, if the residents want it, on the realities as they exist today and not as they existed in 1909. This is the sole purpose of section 3, to enable the residents of three separate areas of the city to vote on an issue which is of concern to them and to their local wards, rather than to place the question based on an historic entity which, in fact, over the years since 1909 to today, has been broken down into separate and distinct areas.

Mr. Chairman: Can you indicate for the record what notice has been given?

Ms. Foran: We have filed a notice with the clerk of the committee. The application was advertised, in accordance with the standing orders, in the Globe and Mail. I do not have the dates, but the clerk has them. It was also advertised in the Ontario Gazette for four consecutive weeks.

1030

Mr. Chairman: Perhaps the clerk could put into the record what notice was given.

Clerk of the Committee: The advertisement ran in the Globe and Mail on March 3, 10, 17 and 24, 1987, and in the Ontario Gazette on March 7, 14, 21 and 28, 1987.

Mr. Chairman: All right. Also with us is Alderman Betty Disero. I do not know if the alderman wants to make a comment now before I turn to the government for comment?

Alderman Disero: Just that when we did discuss this at council, the idea of the boundary divisions, there was no problem with council. There was



no discussion actually on that. There was another section that we talked about in terms of the majority during the plebiscite and there was some discussion there. However, there was no indication of any opposition from the community or the members of council when we discussed the boundary changes.

Clearly, there are three distinct communities. When the clerk did the boundary changes for the bill that decided the new boundaries for the city wards, in fact they came up with the solution that in fact there are clear distinctions between each of those communities. It was also, if I can just add, evident during the last plebiscite in 1984, and this would concentrate areas where there was one view and areas where there was another to actually make stronger the views of each community.

Mr. Chairman: I take it then that Alderman Boytchuk and Councillor Shea have no objection?

Alderman Disero: They are not opposed to the the question with the boundary changes. There were other matters during that discussion that they were opposed to, but which are not before you today. But according to the boundary changes, according to Alderman Boytchuk: "You do what you want. I will do what I want and never the two shall meet, I suppose," but he has not objected to having the boundaries changed.

Ms. Foran: The matter was at the city council at its meetings on May 2 and 6 and so all of the members of council were aware. I received my instructions on those days. All of the members of council were notified and were told that they could speak to the committee today. I personally notified them by letter. They are all very much aware that the matter is here today and that they are free to come up and speak to it. I think we have done everything that way we could possibly do.

Mr. Chairman: Thank you. Is there any comment, Mr. Neumann, on behalf of the government?

Mr. Neumann: Yes. Initially there was concern from senior counsel of the Liquor Licence Board of Ontario that this should perhaps be done through public legislation. However, legislative counsel have determined that it is sufficient or is a proper subject for a private bill. That concern was resolved.

We have no objection to the request of the city of Toronto for this private legislation. I would simply note that there are three friendly amendments which the applicant has agreed to. One is the recognition of the three wards rather than two to change the phraseology in section 2 from "either or both" to "any or all." The second is an amendment to change the day on which the act comes into effect, so that it comes into effect the day of royal assent rather than the way it was worded in the application to tie it to another piece of legislation, that legislation already having been given royal assent.

The third one is a correction to the metes and bounds description. Hopefully you will not make the mover read the entire three pages of metes and bounds. As I understand it, all three amendments are acceptable to the city of Toronto application.

Mr. Chairman: Ms. Foran is nodding her head.

Mr. Philip: Councillor Disero, I gather from what you said that all

three councillors who are affected by this are in support of this bill. Is that correct?

Alderman Disero: I have two corrections to make. It is Alderman Disero—

Mr. Philip: You mean you have not changed yet to "Councillor"?

Alderman Disero: No. There are four members of council who are involved.

Mr. Philip: There are strong historical reasons for you to consider that in the British tradition.

Alderman Disero: And there are four members of council who are involved, none of whom are in opposition.

Mr. Philip: I was not sure exactly how much counselling of your constituents there was. Have there been meetings on this? Are your constituents aware of what it is that you are doing?

Alderman Disero: Yes.

Mr. Philip: Have you had very much feedback from them and what was the nature of that feedback?

Alderman Disero: Positive in terms of the boundary changes.

Mr. Philip: Nobody that you know of is —

Alderman Disero: No. According to the issue of whether to liquor license or not, there are various views, but according to the boundary changes and allowing for boundary changes there is no issue. It is positive.

Mr. Philip: As someone who lived in that area when I first attended university in Toronto, I remember situations where part of a restaurant would be dry and part of it would be wet. Has anything been done in drawing up these boundaries that would eliminate some of those fights, what I would consider to be kind of ridiculous fights, where you can drink in the back of a restaurant but not in the front or vice versa?

Alderman Disero: Oh, because of the—

Ms. Foran: If I may answer that, we cannot change the boundaries. It was in the former city of West Toronto in 1909. That is the problem. The boundaries are set out in the 1909 legislation. We cannot change that.

Mr. Philip: But under these boundary changes, you are not going to increase the number of situations you have had, such as the Westwood or whatever that restaurant is called on Bloor Street.

Ms. Foran: No. I do have the city surveyor here and the planner who was responsible for drawing up the boundaries. They have done their utmost to ensure that does not happen.

Mr. Philip: One last question to you, Mr. Chairman, as someone who no doubt has a certain amount of contact with that area. Do you personally support this? If you were not in the chair, would you be in support of this bill?



Mr. Chairman: Fortunately, I am in the chair, Mr. Philip. Mr. Ruprecht?

Mr. Ruprecht: Normally the chairman is not as diplomatic as that. I am really surprised.

I just want to state for the record that this is a historic, landmark decision. This kind of discussion has gone on for at least six years that I know of. I just wanted to state for the record, as Alderman Disero is here, that she is the person who probably deserves the most credit for these amendments, because she has been fighting to ensure that her residents of the part she represents do get to drink and to buy the occasional bottle. Some of these people are of Italian and Latin origin and they are essentially different in their desires than some of the rest of the area.

Having said that, Mr. Chairman, I actually want to be the person who moves this particular amendment, which leaves you off the hook.

Mr. Chairman: I do not have any choice, Mr. Ruprecht. I only have to vote if there is a tie, and even then, I am directed by the rules as to how I must proceed, regardless of the merits of the application, but I appreciate your consideration.

At this point, are there any other questions by members of the committee? All right. That being the case, there are amendments to be dealt with, first, for sections 3 and 4, and then to the schedule. Is somebody prepared to move the amendments? We will start with the amendment to section 3.

Sections 1 and 2 agreed to.

Section 3:

Mr. Chairman: Mr. Ruprecht moves that section 3 of the bill be amended by striking out "either or both" in the third line and inserting in lieu thereof "any or all".

Motion agreed to.

Section 3, as amended, agreed to.

Section 4:

Mr. Chairman: Mr. Ruprecht moves that section 4 of the bill be struck out and the following substituted therefor:

"4. This act comes into force on the day it receives royal assent."

Motion agreed to.

Section 4, as amended, agreed to.

Section 5 agreed to.

Preamble agreed to.

Mr. Chairman: Mr. Ruprecht moves that the schedule to the bill be

struck out and the following substituted therefor:

"SCHEDULE

"Area 1:

"In the city of Toronto, in the municipality of Metropolitan Toronto and province of Ontario, being composed of a portion of the former city of West Toronto, annexed to the city of Toronto by the City of Toronto Act 1909, the boundaries of the said portion being described as follows:

"Commencing at the intersection of the westerly city limit of the city of Toronto and the centre line of the Canadian Pacific Railway lying north of Dundas Street West;

"Thence easterly along the centre line of the Canadian Pacific Railway to the centre line of Keele Street;

"Thence southerly along the centre line of Keele Street to the original northerly limit of Bloor Street, now Bloor Street West;

"Thence westerly along the said original northerly limit of Bloor Street West to where the same is intersected by the northerly production of the westerly limit of High Park as it existed in December 1890;

"Thence southerly along the said northerly production of the westerly limit of High Park to the original southerly limit of Bloor Street West;

"Thence westerly along the said original southerly limit of Bloor Street West to the existing westerly limit of that portion of the city of Toronto lying between Bloor Street West and Annette Street, as defined in the City of Toronto Act 1941;

"Then northerly along the said existing westerly limit of the city of Toronto to its intersection with the westerly production of the northerly limit of Annette Street;

"Thence easterly along the said westerly production to and along the said northerly limit of Annette Street to the westerly limit of Elizabeth Street, now Runnymede Road;

"Thence northerly along the said westerly limit of Runnymede Road, formerly Elizabeth Street, being along the westerly limit of the former city of West Toronto to the point of commencement.

"Area 2:

"In the city of Toronto, in the municipality of Metropolitan Toronto and province of Ontario, being composed of a portion of the former city of West Toronto, annexed to the city of Toronto by the City of Toronto Act 1909, the boundaries of the said portion being described as follows:

"Commencing at the intersection of the centre line of Keele Street and the centre line of the Canadian Pacific Railway lying north of Dundas Street West;

"Thence easterly along the centre line of the Canadian Pacific Railway to its intersection with the westerly limit of the lands of the northern



division of the Grand Trunk Railway;

"Thence southerly along the westerly limit of the lands of the northern division of the Grand Trunk Railway to the southerly limit of the Canadian Pacific Railway;

"Thence westerly along the southerly limit of the Canadian Pacific Railway to the westerly limit of the lands of the Grand Trunk Railway;

"Thence southerly along the westerly limit of the lands of the Grand Trunk Railway to where the same is intersected by the easterly production of the southerly limit of Humberside Avenue;

"Thence westerly along the said easterly production to and along the said southerly limit of Humberside Avenue to the limit between township lots 34 and 35 in Concession 2 from the bay in the original township of York;

"Thence southerly along the said limit between township lots 34 and 35 to the original northerly limit of Bloor Street, now Bloor Street West;

"Thence westerly along the said original northerly limit of Bloor Street West to the centre line of Keele Street;

"Thence northerly along the centre line of Keele Street to the point of commencement.

"Area 3:

"In the city of Toronto, in the municipality of Metropolitan Toronto and province of Ontario, being composed of a portion of the former city of West Toronto, annexed to the city of Toronto by the City of Toronto Act 1909, the boundaries of the said portion being described as follows:

"Commencing at the intersection of the westerly city limit of the former city of West Toronto and the centre line of the Canadian Pacific Railway lying north of Dundas Street West;

"Thence in general northerly and easterly directions, being along westerly and northerly limits of the said former city of West Toronto to the westerly limit of the lands of the northern division of the Grand Trunk Railway;

"Thence southerly along the said westerly limit to the lands of the northern division of the Grand Trunk Railway to the centre line of the said Canadian Pacific Railway;

"Then westerly along the said centre line of the Canadian Pacific Railway to the point of commencement."

Motion agreed to.

Schedule, as amended, agreed to.

Title agreed to.

Bill, as amended, ordered to be reported.

Mr. Chairman: Thank you very much and congratulations, Alderman Disero.

TOWN OF MARKHAM ACT

Consideration of Bill Pr20, An Act respecting the Town of Markham.

Mr. Chairman: The next matter before the committee is Bill Pr20, An Act respecting the Town of Markham. Mr. Cousens is the sponsor. Mr. Cousens, perhaps you could introduce the representatives of the applicant.

Mr. Cousens: I appreciate the committee's indulgence in receiving Bill Pr20. I have with me, on my immediate right, the solicitor for the town of Markham, Ray Kallio, and on my far right is a lady—perhaps I could just take a few moments to tell you about Donna Bush.

Donna has been unable to work for the last 18 months because of asthma, a condition brought on because of second-hand smoke. She is a person who wants very much to be able to go back to the workplace. It is this bill that will enable her and others like her to do so. She has been one of the really strong supporters of this bill and was successful in persuading our local council in the town of Markham to unanimously support the initiatives that are before this committee of the Legislature today.

I am pleased to support it. I see it as something that is a progressive step in our community. Therefore, I am pleased to have our solicitor make any further comments or answer any questions you might have.

I also want to thank our chairman, Mr. Fleet, for scheduling this for the committee because I know how busy it is. Because of the fact this has such urgency for the town, and because you have fitted it in today, I extend sincere thanks.

Mr. Kallio: The bill is basically divided into two parts. Section 1 is legislation to deal with smoking in the workplace. It is legislation that is basically almost identical to that of the city of Toronto; that was the City of Toronto Act, 1986. I think that has received wide publicity.

Etobicoke's bill, I understand, is again identical to the city of Toronto's legislation. We are asking for the same power the city of Toronto has to regulate smoking in the workplace.

The second part of the bill, section 2, deals with smoking or regulating smoking in enclosed public places. To my knowledge, there is no specific authority for a municipality to regulate smoking in enclosed public places. A number of municipalities in Ontario have done so, including the town of Markham. It appears, in my view, that it was a social and health matter that sort of went past the legislation.

My concern as a solicitor, which I expressed to the town council for Markham, is that if the bylaw is challenged, the municipality has a very difficult time in justifying it in order to get a successful prosecution. As it stands now, there seem to be several ways of doing it. One is that the municipality would have to prove that it was a public nuisance. The second way would have to be that the municipality would have to show that it was for the health and welfare of the inhabitants.

What the town of Markham is asking for, much like many other sections of the Municipal Act, is specific legislation to control or to regulate smoking in public places. Under section 210 of the Municipal Act, there are very specific regulations to regulate certain things; for example, signs, animals,



fences, that sort of thing.

The way the legislation is now, it is of a very general nature. It is, in my opinion, very prone to being knocked out in a serious court challenge. Even though there is no specific legislation at this time, and it appears that no other municipality has it, it seemed like a good opportunity, when we came before this committee with a bill to regulate smoking in the workplace, to have one for enclosed public places at the same time. In that way, we would be able to control malls as well as the other various matters, such as bus shelters, office buildings and health care facilities.

I submit that it is a reasonable request and that it would give teeth to what the town council is trying to do; that is, to regulate smoking for the benefit of all inhabitants of the town of Markham.

Mr. Chairman: Before I turn to the government, I have had a discussion with Mr. Philip, and at his request I will just put on the record—not that I think it is necessary, but just out of an abundance of caution on his part—that he wanted to indicate that his wife is a chief officer for the health line of a crown corporation offering a stop-smoking program. In my function as chairman, I do not know if I have to rule, but I do not think that is a conflict of interest in any way. I cannot say that is a professional legal opinion; that is my opinion as the chairman.

Mr. Philip: I just want it on the record in case any member objects to my voting on this. I think I was on the record in terms of the bill of the member for Carleton (Mr. Sterling) long before my wife took charge of this particular corporation. Naturally, corporations that are offering assistance to people to stop smoking would benefit by any of this legislation, and I just want it noted. If any member objects to my voting on this, let him be heard now, and if not—

Mr. Chairman: Or for ever hold their peace. Thank you very much. I appreciate the sense of prudence and concern the member has offered.

The clerk is pointing out to me that there has been a document provided dated June 14, 1988, from the Canadian Cancer Society concerning the issue and the bill that are before us. Is there a comment from the government? Some committee members will want to ask questions.

Mr. Neumann: Yes, we do have a comment. Bill Pr20 has two sections to it. One deals with smoking in the workplace, and we do not have any objection to that section of the proposed private legislation for the town of Markham.

With respect to the section dealing with smoking in public places, we would like to bring to the attention of the committee a concern we have. Quite a number of municipalities across Ontario have passed bylaws regulating smoking in public places and they have done so under existing provisions within the Municipal Act, not through private legislation.

There are three sections of the Municipal Act. Perhaps I should outline them for the committee.

Section 104: "Every council may pass such bylaws and make such regulations for the health, safety, morality and welfare of the inhabitants of the municipality in matters not specifically provided for by this act as may be deemed expedient and are not contrary to law...."

Section 210, paragraph 27: A municipality may pass bylaws, "For regulating smoking in retail shops in which 10 or more persons are employed, or in any class or classes thereof, and for prohibiting smoking in such shops or any class or classes thereof, or in any part or parts thereof."

Section 210, paragraph 134: A municipality may pass bylaws, "For prohibiting and abating public nuisances."

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There was a court case that upheld the right of the municipality to act in this manner under the existing provisions of the Municipal Act. There is some concern we have had, not by letter but verbally, to our legal counsel in the ministry from other municipalities. They have expressed a concern that by adopting the provision for Markham, through private legislation, it might sort of indirectly call into question the general authority under the Municipal Act.

It is the feeling of the ministry that this section is really not necessary and that councils do have the authority to act to bring in bylaws controlling smoking in public places under the general provisions of the Municipal Act. Therefore, this section is not necessary. However, we are not expressing a strong objection to it. We are simply drawing this concern to the attention of the committee.

Mr. Chairman: I have a number of people who want to speak: Ms. Collins, Mr. Sterling and Mr. Philip, in that order.

Ms. Collins: I am actually speaking as the parliamentary assistant to the Minister of Labour (Mr. Sorbara) to indicate that the Minister of Labour supports the initiative of the town of Markham. The government is supportive of measures to enhance achievement of tobacco-free and smoke-free workplaces.

The ministry has been working on policy proposals for the government's consideration. In fact, the minister expects to take policy proposals forward to relevant cabinet committees later this month. I just want to indicate that there are no problems from the Minister of Labour's point of view.

Mr. Sterling: I am indeed encouraged that the government is not attempting to block both of these bills by the town of Markham and the city of Etobicoke today. I was somewhat concerned when I heard they were coming down that there would be an attempt to use the old excuse, "We are going to take care of this problem some time in the future and we won't allow this to go ahead."

I am really quite pleased the government is allowing it to go ahead. I do not know whether it will ever get its policy process up to the stage where—I do not know whether it will be necessary by the time it gets its policy figured out.

Notwithstanding that, I would like to deal with the particular clause that is objectionable. I am not certain I understand, Mr. Neumann, whether or not you are noting your objection or whether or not you are going to allow the town of Markham to have this particular section in the act. I would like to ask, is this section, as your counsel reads it, wider than the current legislation permits in controlling smoking in public places?

Mr. Chairman: Just before the answer, so that everyone is aware, the



committee will determine what the committee will pass or not pass. The government offers its views.

Mr. Neumann: In this case, we felt it necessary to draw to the attention of the committee, without expressing a strong direction one way or the other, the concerns we have heard from quite a number of other municipalities that have passed bylaws under the general provisions of the Municipal Act.

It is the feeling of the advisers I have that this section really is not necessary, while the town of Markham, on the other hand, feels quite strongly that it would be easier for it to enforce smoking controls in public places with private legislation. I think it is a judgement call for the committee, but perhaps I could ask Mr. Chipman to comment, being the legal adviser.

Mr. Chipman: To respond to the particular question raised by the member, it is difficult to say whether this power is wider or narrower. The existing powers in the Municipal Act are very general in nature. It could be argued that these powers, while being more specific, would in fact be narrower because once you have specific powers in place then you cannot go beyond those specific powers, whereas, when the legislative authority is more general, it is obviously much more difficult to determine where the limits are.

I will just follow up on the point made by Mr. Neumann. There are, in fact, 60-odd municipalities in the province that have passed antismoking legislation under the current general provisions in the Municipal Act. The authority of municipalities to pass that legislation has been raised in the courts, to my knowledge, only once and that was in the Toronto decision, in which the court held that the city did have the authority, under the existing powers in the Municipal Act, depending on the section being utilized, to enact antismoking legislation if the city was able to establish that smoking was a nuisance and that there was a danger to health. In the case of the decision on the Toronto bill, the bylaw was held to be ultra vires because of other matters in the bylaw itself, but the court made it quite clear at the time that the city did have the authority to pass this type of bylaw. Subsequently, a number of other municipalities have passed such bylaws.

The concern raised, which is a concern of lawyers, is that if a more specific authority is put in place for the town of Markham or any other individual municipality, then should a person seek to challenge existing legislation in Toronto, Mississauga or wherever, regarding smoking in restaurants or in a public place, he would argue that the Legislature has decided that more specific power is needed. Therefore, the general powers in the Municipal Act are being questioned.

We cannot say that such a challenge would be successful, but certainly the climate is created within which such a challenge could be brought should somebody seek to challenge the legislation of other municipalities. So while in one sense it is hypothetical, because the situation is not yet there in order to go before the courts if this legislation is put in place, we see the danger arising of other municipal legislation being challenged on the grounds that the Legislature must have felt that specific authority was needed and that general authority really is not good enough.

Mr. Philip: May I ask a supplementary on that, Mr. Sterling?

Mr. Sterling: If I could just ask a question, this is not a government bill; a private bill is a different bill. Therefore, if I were

prosecuting on behalf of the town of Markham, the argument I would put would be that this was special legislation required by the town of Markham and what it felt was necessary, not what the Legislature of Ontario in general felt was necessary for the province of Ontario, and therefore the generic arguments about what you state are not necessarily so.

There is a difference. If it was a government bill, I think your argument would be valid. This is a special bill and, as such, does not appear in the same area in terms of statutes; and everybody knows they are different pieces of legislation.

Mr. Chipman: Yes, that is quite correct; if it were a government bill, the argument would be a stronger bill. The fact remains that the legislation, if approved, will be approved by the Legislature.

Mr. Chairman: Is there any particular comment that the applicants want to make in this respect before I go to Mr. Philip?

Mr. Kallio: On a legal point, I believe the case that has been referred to is the case of Weir et al. and the Queen, a 1979 case. There, the city of Toronto bylaw was challenged in 1979. Basically, the city of Toronto passed the smoking-regulation bylaw on the basis that it was for the health, safety, morality and welfare of the inhabitants and also that smoking was a public nuisance.

The people who were challenging that bylaw made an agreement with the lawyer for the city of Toronto that they would not challenge the factual basis for saying it was a public nuisance or that it was for the health and safety of the inhabitants. In other words, they conceded that could be factually correct for the purpose of this application.

Having said that, the court went and discussed those various sections. They said there is a section under the Municipal Act for the health, safety, morality and welfare of the inhabitants. I am just reading the headnote. It said, "Unless the section is approached with caution, a municipality could be deemed to be empowered to legislate in a most sweeping way."

In other words, that section has been very narrowly interpreted by the courts. If it were not so, a municipality could go bananas and pass all kinds of bylaws under the guise of protecting the inhabitants. It is like a last-ditch legal argument; if you do not have specific authority and you are challenged, you use that section, but it provides very little comfort to a municipality in a legal sense.

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The second one is that whether or not it is a public nuisance, the courts have said that just because a municipality says it is a public nuisance does not make it that; you have to have expert evidence to prove it is a public nuisance. In a bylaw prosecution, a municipality has to prove it is a quasi-criminal matter; it has to prove beyond a reasonable doubt all the important elements of the charge. If we were challenged, we would have to call expert evidence that it was a public nuisance.

To put it as succinctly as possible, a municipality does not want general legislation; a municipality has delegated power from the province. It needs specific authority. What we are asking for is that you give us the same authority you give us for regulating animals, signs, awnings. There is



specific authority. General authority is of very little assistance to the municipality. If we have these roadblocks or these hurdles we must cross if we are challenged, we would have to come back here and ask for the specific legislation, because my view is that it is very difficult to prove the various elements on a smoking-regulation law because we do not have the specific authority.

Once you are in a courtroom, every municipality is there for itself. The courts are not overly impressed that municipalities have passed bylaws without the authority. The law is quite clear: If you do not have the specific authority or if you cannot prove it on general grounds, you may not succeed.

Mr. Chairman: The chair notes that this committee will be passing on what it thinks of basket clauses in a report shortly to be tabled in the Legislature.

Mr. Philip: First to Mr. Chipman and then to the city of Markham, if you do have these anxieties, why could we not simply add a section to the bill to the effect that nothing in this bill limits the right of a person or council conveyed under the Municipal Act? Would that solve the concerns you have? There are certainly numerous incidents where legislation does have a clause like that.

Mr. Chairman: Do you want to think about that before you answer?

Mr. Chipman: I would like to think about it a bit, yes.

Mr. Chairman: Mr. Neumann, do you have any particular comment or do you want to think about it?

Mr. Neumann: The only comment I would like to make is with respect to the concerns expressed by solicitors from other municipalities, and I said they were verbal expressions of concern. I think you can see from the presentation by the town of Markham that to some degree it is expressing dissatisfaction with the general provisions in the Municipal Act, and in a way, by accepting the private legislation, the committee would be agreeing with that. I think we should be expressing confidence in the actions of the 60 or 70 municipalities which have acted under the general provisions—

Mr. Philip: The point I am making, though, is that if you add a clause like that, you give the local municipalities the option of going either under the Municipal Act or going under their own individual, more specific legislation, whichever one they wish to use. Why not give them that option if they wish? If there are problems that Mr. Chipman is indicating are real problems, why not cover it?

Mr. Neumann: I would rather see the committee or the Legislature await a problem. In other words, if somebody challenges one of the 60 or 70 bylaws that are under the general provision and the court rules that there is not sufficient power, then I think the Legislature would be required to act.

Mr. Philip: It seems to me that before you run up huge legal fees for some municipality, and the municipality may be a fairly small municipality, if you can avoid a challenge, why not put it into the bill?

Mr. Neumann: The track record is there from the many municipalities which have passed the bylaws and they have been there and implemented quite successfully.

Mr. Chairman: Before I go back, do you want to ask a question or do you prefer to wait?

Mr. Sterling: I would like to hear any further thoughts on Mr. Philip's suggestion.

Mr. Chipman: The answer to Mr. Philip's question is that inserting such words would not have any effect, and I have checked with legislative counsel to confirm. As this is private legislation, it would have no bearing on the interpretation of general public legislation, and while it is a matter that a person may wish to bring before the courts in argument, it has no legal bearing as such and, therefore, putting those words into the private bill would not affect a court case arising on an interpretation of the Municipal Act itself.

Mr. Philip: If it has no effect, why are you worried? That is a cyclical argument. If it has no effect, then you do not have a problem. If it does have an effect, as you are saying it might, then you should put in the clause. It is either/or. I just do understand the logic at the moment.

Mr. Chairman: The chair shares the confusion of Mr. Philip. Either it cuts one way or it cuts the other way, but I do not understand how, in essence, it fails to cut either way.

Ms. Mifsud: May I just speak on this issue for a moment?

Mr. Chairman: Please do.

Ms. Mifsud: There is a provision in the Municipal Act that says a private act does not affect another municipality; it affects only the municipality to which the private act applies. I think the argument being made is that clever lawyers will bring this in. Other municipalities have had to go and get private legislation. Therefore, as a principle, because they had to do this, it throws some question on the law, but it is not a legal issue. It is just something, I am sure, they will bring up as a sort of direction to the court. But legally, this act should not affect any other municipality.

Mr. Philip: Then why worry about it?

Mr. Chairman: I think that is probably Mr. Neumann's point; it would be better to go without it.

Mr. Neumann: I think the initiative for my bringing it forward came from solicitors from other municipalities expressing their concern that it could be used as an argument in a challenge.

Mr. Philip: I would like to hear Mr. Sterling on this, because he is a lawyer and he has also studied a lot of this kind of legislation. It seems to me that you have created a straw man. Now we find that it is in there and we should not worry about it.

Mr. Chairman: At least the chair thinks he understands what the issue is. While I am quite happy to deal with new points, I do not want to beat this one any more to death than it has been, because I am conscious of the time and the other matters still to be dealt with today.

Mr. Sterling: When we were dealing with Bill 71 and we went through public hearings with Bill 71, which was my private member's bill dealing with



the same issue, not the same legislation, there was no question that there is a question about jurisdiction in the minds of a lot of legal counsel and municipalities. So the counsel for Markham is echoing what was heard in those committees before. I think that he quite rightly, in representing the town of Markham, has put this clause in.

The conclusion of the argument that has come out is the question I was trying to place before and perhaps did not put as clearly; that it is private legislation and therefore would be incorrectly used in a legal argument.

To raise that as an objection to this legislation, I do not think is valid, because what you are doing is saying that you must protect future lawyers' arguments that are not correct. I do not believe we should penalize the town of Markham because of that fact.

Mr. Chairman: Mrs. Grier, do you have a new point?

Mrs. Grier: I have just one final question on this. Presumably it is open to the minister, if he feels that this legislation is going to cause problems for other municipalities, to put some clarification in the Municipal Act. Is that not the way to remedy the situation?

Mr. Chairman: I think that is the point Mr. Neumann made. If a problem actually arises, and I think they anticipate it should not, they would deal with it then.

Are there any other questions by members of the committee? There being none, might I have a motion to carry sections 1, 2, 3, 4, the preamble, the title and the bill?

Sections 1 to 4, inclusive, agreed to.

Title agreed to.

Preamble agreed to.

Bill ordered to be reported.

Mr. Chairman: Thank you very much.

Mr. Cousens: Thank you, Mr. Chairman. I also thank Ms. Collins for the support from the Minister of Labour (Mr. Sorbara). He is a close neighbour of Markham and he continues to show good support for our needs, as does the committee.

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#### CITY OF ETOBICOKE ACT

Consideration of Bill Pr52, An Act respecting the City of Etobicoke.

Mr. Chairman: The next matter is Pr52, An Act respecting the City of Etobicoke. Dr. Henderson is the sponsor. Perhaps when you have all had a chance to sit down, the applicants can be introduced. I take it there is no one else who is going to be speaking to this bill, other than the applicants. Is there anybody else in the audience who is going to speak to this bill, other than the applicants?

Mr. Mahood: I would like to speak to it.

Mr. Chairman: OK, I think I know which way you are going to go.

All right, Mr. Henderson.

Mr. Henderson: I am very happy to sponsor and support this piece of legislation. It is much in the spirit of the legislation we just considered and I do not want to take up any time unnecessarily in retracing ground we have just covered. I want to say only that as a physician, as well as a citizen, legislator, parent and I guess a few other things, I think this is the direction we ought to be going in. It is very much in the spirit of similar legislative thrusts.

I think I will stop there and introduce David Robertson, a councillor for the city of Etobicoke, who will introduce the other people here at the desk and will carry on.

Mr. Philip: We do have councillors in the city of Etobicoke.

Mr. Chairman: Yes, actually I was aware of that. The city may not be as up to date as it ought to be.

Councillor Robertson: I would like to introduce the members of our group here today. Dr. Egbert is the medical officer of health in the city of Etobicoke. Bruce Ketcheson is our solicitor. We also have with us Dr. Kawa, the associate MOH, and Norma McGuire, chairman of the board of health.

I will not beat this one to death either, because I know the committee already understands what we are asking for. You have already approved a couple of them, one just minutes ago.

I would like, though, to say only that we have had outstanding support for this bill in the city from residents, from employees of private and public companies. We also have the support, as you can see by evidence of the fact that they are here, of three of our MPPs: Dr. Henderson, who is moving the bill for us, Mrs. Grier and Mr. Philip. We are very thankful for the support we have received and would ask the committee to endorse it. Thank you.

Mr. Chairman: I might add, knowing as I do the member for Etobicoke West (Mrs. LeBourdais), you have her support as well.

Is there a representative of the government who wishes to make a comment?

Mr. Neumann: Our comment would be similar to the previous one. The government has no objection or concern with respect to the committee proceeding to approve this request for private legislation.

I would thank the parliamentary assistant to the Minister of Labour, the member for Wentworth East (Ms. Collins), for elaborating on the minister's support for this direction and the indication that general legislation is forthcoming at some point. However, we do not see a need to object to this request at this time.

Mr. Chairman: Thank you. Are there any questions from members of the committee?

Mr. Philip: I just want to say that I have not polled my



constituents on this particular bill, but I did do a poll on Mr. Sterling's bill and the result was overwhelming support for the principle of what Mr. Sterling was trying to do. Therefore, I have no doubt that the support in Rexdale at least is overwhelmingly in support of the thrust of this legislation.

Mr. Sterling: Thank you. I am glad to hear I am the most popular Conservative in Etobicoke.

Mrs. Grier: It is not hard.

Mr. Philip: There are so few of them. When you get 12 per cent of the vote, I guess there are not that many around.

Mr. Sterling: I would like to congratulate you, councillor, your council and Jim Henderson, who I know has been a supporter of my bill, as well as the other members. All of the members from Etobicoke have been strongly supportive of Bill 71, as it was in the past.

I think this is probably better legislation than Bill 71 was, or Bill 3 as it now stands in Orders and Notices. I always held Bill 71 as a flagship more than actual legislation, but I am really happy to see the city of Etobicoke take it up.

I only hope that we can, in the not-too-far-distant future, establish this as a right not for three privileged cities or towns in Ontario, but that each and every municipality in Ontario will be able to enact smoking-control bylaws regarding the workplace in every municipality across our province. I look forward to that day.

Thanks very much for your help in supporting Bill 71 and in taking the leadership in this area.

Mr. Chairman: There being no further questions, did you want to come forward and make a statement, Mr. Mahood?

Mr. Mahood: I am the executive director of the Non-Smokers' Rights Association. As members of the committee may know, we have had a historic interest in the involuntary smoking issue for some 14 years in the province. Of course, the initiatives taken recently to try to regulate the problem of environmental tobacco smoke in the workplace are of great consideration to us.

Here today we wish to go on the record as being in support of the initiative by the town of Markham and the city of Etobicoke, but with a very important and I think significant qualification.

The risk assessments done on environmental tobacco smoke in the last three or four years by the office of the surgeon general, as recently as December of last year—published at that time, at least—by James Repace and Alfred Lowrey as part of the Environmental Protection Agency carcinogenic risk assessment—Perhaps I could pass around the best summary we have seen anywhere with respect to the carcinogenic risks. There is a very simple little table on here which I would appreciate drawing to the committee's attention. It was summarized in the New York Times when the assessment was first done.

The estimates of carcinogenic risk were in the neighbourhood of 500 to 5,000 lung cancer deaths in the United States. Health and Welfare Canada has reviewed these figures. Using what is called the rule of thumb in medicine in Canada, you can simply divide the figures by 10. Health and Welfare Canada's

review of the carcinogenic risk was about the same. It has estimated now that we have a minimum of 330 lung cancer deaths in Canada.

When you look at the other sources of carcinogenic risk, you find that even when you add all the other carcinogenic risks, it does not come close to being as serious as the cancer risk from environmental tobacco smoke. You may appreciate our concern when a cancer risk is as significant as that. You may appreciate our concern when the province is passing off the responsibility for regulating a carcinogenic risk of this gravity on to the municipalities.

You may appreciate our concern when the workers for one firm in a municipality have protection because a committee in that corporation has reviewed this and a policy has been decided, but in the office right next door another employee will have no protection at all because a committee in that workplace has reached a different decision. When you cross the line between Etobicoke and Mississauga, a worker in Etobicoke will have some measure of protection perhaps, but the worker next door, right on another corner, on another intersection, has no protection whatsoever.

The province would no more allow a committee of workers in a workplace to decide how vinyl chloride is handled or benzene or coke-oven emissions, than they would allow them to regulate any other serious carcinogenic risk. For the province to allow the municipalities to allow bylaws to be brought forward which will then make these haphazard regulations with respect to dealing with smoke in the workplace is simply bizarre.

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So we reluctantly say you have to go ahead and give the cities of Etobicoke, Markham and Toronto the ability, as requested, to deal with this in the absence— They are showing the leadership and they deserve great praise, because the board of health in the city of Toronto and the board of health that Dr. Egbert represents have been showing leadership on this consistently for a number of years and deserve to be supported.

However, the province simply has to move, because the approach to this carcinogenic risk, and this is a long-standing one, is simply not satisfactory. The municipalities should not be dealing with this city by city, town by town across this province; it deserves more serious treatment. In conclusion, in the process of dealing with it this way, the province demeans the gravity of the risk. I cannot stress that enough. The province demeans the gravity of the risk. Thank you.

Mr. Chairman: Thank you very much. Are there any further comments?  
Ms. Collins.

Ms. Collins: Yes, I do want to respond to the comments made by Mr. Mahood. I indicated on the last bill that the Minister of Labour (Mr. Sorbara) supported the town of Markham in its initiative and, as well, the minister supports the initiative by the city of Etobicoke. It is a very sensitive issue and it requires essentially a reasonable response if our work is to be successful.

I indicated earlier that the minister expects to take policy proposals forward to the relevant cabinet committees later this month. There are advantages and disadvantages associated with either the province or the municipalities taking on this responsibility. One approach may be to have the province set a standard policy which could be enhanced by municipal bylaw.



I just wanted to point out to the gentleman that the minister will be coming forward with a policy, the province will have province-wide standards in this regard, but at this point there is no indication as to whether or not it will be left to the municipalities.

Mr. Sterling: I would just like to say that Mr. Mahood's organization has done much to turn public opinion or educate the public as to the problems that are inherent with regard to secondhand smoke and the problems associated with it. His organization had much to do with working with the federal government in terms of its initiatives in this whole area.

As I have stated in the Legislature, I get angry about the issue because we lose so many good people every day in this province as a result of the effects of firsthand and secondhand smoke, and I think that by controlling smoking in the workplace, by controlling smoking in the public place we will encourage people to try to get off the addiction to nicotine if that is at all possible.

This organization that Mr. Mahood has set up and been at the head of, along with his counsel, David Sweanor, with whom I have worked closely, has done, I think, an enormous amount of good for the people of Ontario in the past. I want to congratulate you on your successes. I only hope that you are as successful with the province of Ontario as you have been with our federal government. I think Jake Epp, the federal minister, showed an immense amount of leadership in bringing forward his bill. I am sure there was opposition within his cabinet to what he was doing. He stood by his guns and carried through.

I also think, quite frankly, that notwithstanding what anybody might think about the federal administration in a political sense here, they did have the intestinal fortitude to carry forward a significant private member's bill in terms of dealing with smoking in the workplace, which was brought forward by a member of the New Democratic Party, Lynn McDonald. I think it takes a lot of courage on the part of the government to say: "Here is a private member, and we will give her credit." She received credit on the front page of the Globe and Mail, I do not know how many times for doing that. But it also takes political courage to do that. I hope this government will take some kind of a lead in terms of this whole issue. I wish your organization well in pushing them towards that.

Mrs. Grier: I was going to say that I echoed Mr. Sterling's compliments to the delegation and Mr. Mahood, but then Mr. Sterling went too far.

I certainly appreciate the federal legislation, but I would not want the impression to be left that Mr. Epp was willingly giving support to a private member's bill. There was a certain amount of kicking and screaming as the legislation was adopted, but at least it was adopted.

I want to concur with Mr. Mahood's suggestion that it really ought to be a provincial piece of legislation that would prevent the municipalities from having to go through the hassle of devising their own and having delays. I for one certainly look forward to the Minister of Labour bringing forward an early initiative and hope that it is not going to be too much of a local option.

We do not need smoking and Sunday shopping being debated in the same breath. I think it is important that we have these kinds of laws all across the province. I congratulate Etobicoke for taking the initiative to bring its

proposals forward and hope it will be passed expeditiously.

Mr. Sterling: Can I just ask one question as a matter of interest? What are the direct costs for a municipality to go through this process? What did it cost the town of Etobicoke to do this? I am not talking about the time you spent or whatever it is, but you had to pay for the printing of the bill, the notifications and all that kind of thing.

Maybe the clerk could answer that.

Mr. Chairman: Let's see if the applicants have an idea of what their costs have been.

Mr. Sterling: Do you have any idea?

Mr. Ketcheson: I would estimate in terms of the disbursements including part of the legal bills—

Mr. Chairman: You are going to have to sit at a mike, I think.

Mr. Ketcheson: My best guess in terms of the disbursements, including the advertising and the filing fee, is that it would have been about \$600 to \$700.

Mr. Sterling: And in terms of the legal fees, do you have any idea roughly? I do not want to see your account or anything.

Mr. Ketcheson: I may be embarrassing myself before this committee. In terms of the legal fees, I would say it would probably have been in the range of \$4,000 to \$5,000. That would have included working the bill up through council and through the committees with the board of health, together with the preparation and presentation to this committee.

Mr. Sterling: I think it just makes it all the more important that we do what Mrs. Grier has talked about in terms of getting a province-wide bill rather than having 800 municipalities having to go through the same process.

Mr. Philip: Otherwise, as a result of the municipal option, people may be able to go into grocery stores on Sunday and buy a cigarette. But unless the municipality has passed the municipal private bill, they may also be able to light them up in those shopping centres.

Mr. Chairman: That might deter people from shopping on Sundays, might it not?

Mr. Philip: That is typical of this government's policy.

Mr. Mahood: Just by way of one comment, what is happening in the province is indicative of tremendous social change when you find major corporations quite independent, say, for example, of the Toronto workplace bylaw, bringing in policies which in effect are in accord with the medical evidence.

The medical evidence is that there are only two acceptable solutions for a cancer risk of this gravity. One is to have no smoking whatsoever or, if smoking is permitted, it must be done in separately ventilated rooms, exhausted out of doors.



That was the decision in the case involving Peter Wilson and the federal Treasury Board. That was the conclusion of the arbiter in that case. It is the medical conclusion that is being reached in a number of places. The surgeon general came to that conclusion in his major report just five or six months ago.

What that means is that when corporations come forward and apply one of those two remedies, as did the Globe and Mail, for example, with its policy as well as a number of other employers, it is very important that when the Minister of Labour does bring forward his regulations—and I might add, in case members of the committee are not familiar with the document, and I am sure they all are, the Ministry of Labour under Dr. House, did produce a major report on the health problem in provincial workplaces. I have a few extra copies.

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When the recommendations do come forward, we are hoping they will not undercut the initiatives which are already being taken by Toronto and Etobicoke with their bylaws. We are hoping that they will not undercut what the private sector is doing on its own initiative now, because if the province undercuts that position, we are in very serious trouble in terms of trying to deal with what we call the environmental tobacco smoke epidemic. When these do come forward, to carry the support of the health community, they are going to have to be at least in accord with the initiatives taken by the federal government in Bill C-204, or at least by that private member's bill which carried the support of the House. It has at least to meet those standards; otherwise it will not carry the support of the health community.

Mr. Chairman: Perhaps we might now move to deal with the bill itself. Do I have a motion to carry sections 1, 2, 3, 4 and 5, the preamble, the title and the bill?

Mrs. Grier: I so move.

Sections 1 through 5, inclusive, agreed to.

Preamble agreed to.

Title agreed to.

Bill ordered to be reported.

Mr. Chairman: Done. Thank you very much. I now would like to call our last matter on the agenda. This is Pr40, An Act respecting the City of Trenton. The sponsor is Mrs. Fawcett.

As I indicated earlier, but in case some people are late arriving, we will have an opportunity for the proponents of this bill to make their case, as it were. Potentially, there will be commentary from the government and questions from the members of the committee. Subsequent to that, I will try to ascertain how many people want to make a presentation or comment in opposition.

Because there seem to be a number of people here who may wish to speak in opposition, if it is possible for you to co-ordinate yourselves so that the arguments that we hear are not duplicated, that would be a big help. If there are a number of you who share one particular type of objection, we will certainly allow you to indicate that, but we would rather be able to hear each

argument separately and in some sort of a co-ordinated way, if that is at all possible. I am mindful of the time. Thank you.

That having been said, I call on Mrs. Fawcett.

#### CITY OF TRENTON ACT

Consideration of Bill Pr40, An Act respecting the City of Trenton.

Mrs. Fawcett: I am here in place of the member for Quinte (Mr. O'Neil) to sponsor Bill Pr40, An Act respecting the City of Trenton. With me today are Bob Reynolds, the lawyer for the city of Trenton, and Brian Fagan, the acting chief executive officer for the city of Trenton. I would ask that they give you a background on the bill.

Mr. Reynolds: The effect of the bill before you, very shortly stated, is to abolish the parks board which currently exists in the city of Trenton and to transfer its operations, assets and liabilities to the municipal corporation itself so that, henceforth, the parks system will operate simply as would any other municipal department within the city's administrative structure and subject to the direction of council and its chief administrative officers.

There are broadly two objectives or purposes behind the bill, and they are mentioned briefly in the compendium which was filed some time ago for you. The first one, which is certainly the broader and more significant—and these are set out on page 2, if any of you want to refer to that—are the administrative and political implications.

First, it is the view of the council that the parks system can be operated more effectively and efficiently as a department of the corporation within its administrative structure and subject to the direction and control of its senior administrative officers than is currently the case, where it is off to one side and not subject to such direction and control nor to the city's standard administrative policies and procedures.

The political side of the objective is the view of council, quite simply, that it is more appropriate that council, as the duly elected body representing the municipality as a whole, have more direct control and authority over the parks system.

It is one of those situations where, as matters currently stand, the perceived authority does not in fact match where the effective control really is. So you get the usual thing: there are sometimes problems in the parks, whether it is kids tearing up park property or whatever. Council has no real direct control over that and yet it tends to suffer the political consequences, as often happens in cases where authority and responsibility do not coincide. Council wishes, quite simply, to bring the actual authority for the operation of the parks system within its purview so that it will have not only the responsibility but the ability to deal with it.

The second objective, and it certainly is a narrower and more secondary one, is to rectify a problem that arose some time ago in connection with the way in which land was acquired and held by the parks board. In our interpretation, which I think is supported and generally accepted, the Public Parks Act requires that the parks board, when it acquires park land, take it in the name of the municipal corporation. In other words, the actual deed is to the municipality.



Unfortunately, back in the 1950s and 1960s and perhaps one in the 1970s, deeds were taken by the parks board without the knowledge of the municipality at the time, as far as I know; the parks board and not the municipality. There is no suggestion that there was any evil intent or anything of that nature, obviously, but it created a problem on title in that the lands were not where, according to the act, they should be.

This legislation, which is moving all of the holdings of the parks board into the municipality in any event, is intended in part to correct that problem on title by clarifying the validity of the initial deeds, even though they were to the parks board and by then transferring those assets, the lands, into the municipal corporation.

By way of background to the approach taken in the enactment of this bill, I should say at the outset—I suspect that someone will tell you anyway later—that the Public Parks Act does contain, at least in theory, a procedural alternative to this private bill. It is possible for council to seek abolition of the parks board by obtaining the consent of the electors. That procedure, as you might imagine, is costly and cumbersome, and I think I can fairly describe it as archaic in the sense that it is not one that to my knowledge has been widely used.

Indeed, subject to what others and your advisers may say, the concept of having the voters approve various individual issues has, I think, over the years become inconsistent with the general policy or position that the municipal council, the elected council should be responsible to take what authority it deems appropriate and then bear the consequences of that when it gets to be election time, rather than pawning it off to a plebiscite process. It is worth noting as well that, as of 1986 at least, 14 other Ontario municipalities had enacted private bills to abolish parks boards, and these bills do not differ very greatly from the one you have before you now.

It should also be pointed out that during the processing of this bill, which, as you might have observed from the file, has been going on for quite a while, concerns were raised by some people within the municipality that somehow this transfer to the control of council would mean that park lands might end up getting sold when they should be kept for municipal purposes.

The municipality, in an effort to deal with that concern, changed the legislation fairly significantly, to add requirements that no park land could be sold without prior public notice of council's intention to do so, thus affording members of the public an opportunity to comment.

In earlier drafts it was also required that a separate parks committee of ratepayers would have to approve any disposition. After discussions with the department, the Ministry of Municipal Affairs, which objected to the idea of a separate committee having veto power in effect, that provision was deleted, and I would have to say properly so.

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Where the bill stands now, in terms of protecting park land from possible disposition is that there still must be a parks committee which will presumably function as a forum for public debate. More important, the provision requiring that council give public notice before it proceeds to sell any park land and afford interested persons an opportunity to make submissions is still there.

I do not think that there can be too much question in this day and age that that sort of requirement means that, in effect, it will be very unlikely that council disposes improperly or hastily of public park land. In fact, I think you could fairly say that it would be political suicide these days for council to do that.

I have been made aware this morning that there are objectors present, including one solicitor. I was provided with a rather lengthy brief this morning, containing a number of points—essentially legal points, constitutional arguments, and so on—that I have not seen before, although this hearing has been coming up for some time. I am not suggesting any fault on the part of the solicitor in that regard, but perhaps his client should have advised him sooner.

In any event, I would urgently ask you, if it all possible, not to postpone dealing with this bill because of the length of the submissions that may be made to you. I expect I will have to comment on them in detail as we go along, but in general I will only say at this point that a number of the points raised are, in effect, constitutional or legal objections to the propriety of the legislation.

This bill has been rather closely examined by Mr. Chipman's office and by the legislative counsel office for about two years. Those offices, I believe, have both the authority and the capability to determine whether or not the bill complies with prevailing municipal legislation and policies and the Constitution and the Charter of Rights. It is my understanding that they do not perceive any difficulties in that regard.

Having said that by way of general introduction, I am of course prepared to answer any questions that members of the committee may have at this point.

Mr. Chairman: I think I have at least two members of the committee who will want to ask questions, but before I do that, I would like to call on the government.

Just so you know, because you may not have an answer right away, at some point the chair would like to know exactly what the impropriety or incorrectness or ineptitude was of the existing board in terms of the conveyance of land. There was a brief, which I think all the committees members have and which you may have, from Mr. Tripp. On page 15, it makes reference to what I take it that Mr. Tripp understands to be alleged inadequacy. If that is the case, that is fine, as long as you can address it at some point. If that is not the case, then I will let you have the opportunity—I do not want to surprise you with what is clearly a technical point. Just at some point I would like you to put that on the record so that it is clear.

Mr. Reynolds: I can do that now, sir, if you would like me to.

Mr. Chairman: No. I will see what the government comment has to say, and then we can go from there.

Mr. Neumann: The request of the city of Trenton is similar to requests for private legislation which have been approved for other municipalities. I cite the legislation passed by the city of Sudbury in 1966, Guelph in 1971, Waterloo in 1971, Brantford and Strathroy in 1982 and Belleville in 1984.



Basically, there is a trend among a number of municipalities to examine the structures of boards, commissions and committees within their communities, to try to make the process of decision-making clearer and more easily understandable and to enhance the accountability of the council to the citizens for decision-making in a variety of areas. So this request from the city of Trenton is in keeping with that thrust, which has occurred in a variety of communities.

The Ministry of Municipal Affairs and the government have no objection to the proposal of the city of Trenton. The only recommendation we would have, and this is consistent with comments we have made on other legislation where boards have been established, is that we would prefer to see the authority for the structure, design and terms of reference for an advisory committee to be with the council, so that the council can make amendments and determine what is in the best interests of the community as to the structure of an advisory committee without having to come back to the Legislature for specific authority.

Let's say they wanted to change the structure of an advisory committee to council. Now, we understand, and I can speak from personal experience here, that when one goes through the process of revising a local structure, that there are long historical associations, that it is an extremely sensitive matter in some communities, that it must be done diplomatically and carefully, and sometimes it provides some comfort to the local citizens to have the structure of the committee in private legislation.

However, it has been done both ways. I think you will recall, Mr. Chairman, that recently we had a request from the city of Hamilton, I believe it was, on its board for its convention centre, and the structure of the board was left as part of the private legislation. I indicated at that time that many municipalities determine at the local level; the council determines by bylaw the structure of an advisory committee.

In this case, the city of Trenton has come forward with that request, and that is why I say that although we would prefer to see the authority remain with the council, so that they do not have to come back to the Legislature if they want to change the structure, we have no objection to the wording of the bill as presented.

Mr. Chairman: Thank you. I just want to alert those who may be objecting that, presumably, the committee will have two types of questions at this point, in my understanding of what the objections may be. The first set of questions may concern the particular provisions in the proposed bill, so that you may want to turn your attention to what is contained in the bill, assuming the bill were to pass. I am not saying it would, but assuming for the moment that it passed, are you satisfied with the provisions that are there? The second question is whether the bill as a whole ought to pass or not.

I am just trying to be of some assistance to the people who are in the audience, because there are really two different types of questions. The briefs I have seen tend to address themselves only to the whole bill rather than look at what is contained in the bill should it happen to pass.

Mrs. Grier was first; Mr. Pollock after that.

Mrs. Grier: I have a couple of question, I guess to Mr. Reynolds. Does the parks board concur in the recommendation of the bill of council?

Mr. Reynolds: Not to my knowledge, no.

Mrs. Grier: How long has this been an issue? What was the process by which the council came to this decision?

Mr. Reynolds: Mr. Fagan can correct me if I am wrong, but I think it can fairly be said that this process was initiated as long ago as early 1986; in fact, I think my involvement would have to go back even to late 1985. It is at that point that I was instructed by the municipal administration, as authorized by council, to initiate the process that has led here today. The reason that it has taken so long, between 1986 and now, is that council went through great contortions to try to develop provisions in the bill as to public notice and so on which might allay some of the concerns that people apparently had that council was going to, you know, dispose of the park land on some dark and stormy night.

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Mrs. Grier: Councils have been known to do that.

Mr. Reynolds: Well—anyway, that is the reason.

Mrs. Grier: Maybe not in Trenton.

Mr. Reynolds: No.

We went back and forth for some very considerable time with Mr. Chipman's office, which was very helpful in terms of the concerns about trying to have a separate committee and so on. That process really took quite a while and that is why we are only here today.

Mrs. Grier: The members of the parks board, I gather, are appointed by council. For how long a term?

Mr. Reynolds: It is the three-year cycle that we are using right now. They are appointed for three years.

Mrs. Grier: I see. So the present parks board members were all appointed by this present council.

Mr. Reynolds: Yes.

Mrs. Grier: What is the difference in the administrative policies and procedures of the parks board from the policies and procedures of council that is of concern?

Mr. Reynolds: Again, Mr. Fagan may want to amplify this, but my understanding is essentially this. It is the wish at least of the municipal council and its senior administration that the parks board system and its staff be operated on a day-to-day basis under the direction and control of the senior administrative officers and in accordance with all the normal administrative policies and procedures set out that apply to other operational departments of the city.

The parks board historically has, however, taken the position that its staff is answerable to it and not to council and council's senior administrators, with the result that there have been conflicts from time to time over particular administrative practices, policies and procedures.



Just as one example that I am aware of because I became involved in it, there was concern at one point by the council members about the tendering processes not being followed effectively, as they thought, by the parks board and the parks board administrative staff. Of course, the issue arose of whether council was in any position to tell parks board staff to follow any particular procedure.

It is that sort of difficulty which is at the heart of council's concern to take the system into its own administrative structure so that there will no longer be such conflicts.

Mrs. Grier: But all the funding of the parks board comes through council and presumably the parks board has to make a submission to council at budget time for its annual allocation.

Mr. Reynolds: Yes.

Mrs. Grier: In my experience, that was certainly the time when council talked or negotiated with its independent boards on personnel policies, procedures and administrative liaison.

Mr. Reynolds: I guess the problem is that has proved, at least in this case, to be somewhat of a blunt instrument, in the sense that you have that control, obviously, but it is not really something that has been effective in producing the sort of supervision and control of day-to-day administration that council and its administrative staff feel is required.

I agree with you that there is obviously a certain amount of leverage because you do have the purse strings that you can yank once a year, but it has not proved effective to impose the degree of operational control that exists, for example, in the other departments.

Mrs. Grier: Finally, I was interested in your characterization of plebiscites as being a fairly archaic instrument for determination of the public will. Could you expand a bit on that? It has been my feeling that, whether it be Sunday shopping or the Prince Edward Island link to the mainland, we seem to be using plebiscites more frequently in this country than in the past, and I wondered why council had rejected that route.

Mr. Reynolds: Perhaps I should frame my comments more on what I could characterize, I suppose, as the municipal law context. There are a number of provisions scattered throughout the Municipal Act and other related legislation—I am sure Mr. Chipman knows more of them than I do offhand—which allow for various actions by municipalities to be reviewed or approved by plebiscite. They often provide alternatives in which council can proceed by itself, subject to certain other limitations, or can apply to the municipal board and so on.

It has been my impression at least that, over the years, the overwhelming tendency has been, as I mentioned before, that procedures other than the plebiscite route, other than asking the electors to decide on it, have been followed. Part and parcel of that has been the tendency Mr. Neumann mentioned earlier—I did as well, I suppose—of letting councils take the action on the basis that they are elected to make decisions and carry out actions and they should then bear the consequences of that decision when the election comes around.

Mrs. Grier: Yet this move was not fought prior to the last municipal

election. It will presumably be an issue in the coming one.

Mr. Reynolds: I cannot comment as to whether it was an active subject of public debate before the last election. I do not believe it was.

Mr. Pollock: A couple of questions. First, was any of this land donated by some person to the parks board and not to the city of Trenton? Is there some hang-up there?

Mr. Reynolds: I confess that it has been so long since I looked at the conveyances that I could not be sure. At least one of the parcels was a donation. Maybe I can kill two birds with one stone: The technical problem the chairman had mentioned is that subsection 13(2) of the Public Parks Act, which is included in the materials which were provided to you with the compendium, states: "The conveyance of all land, rights and privileges so acquired by purchase or lease shall be taken to the municipal corporation." In other words, even though the parks board, when there is one established, runs it, supervises it, is responsible for it, the deed has to be to the municipal corporation.

Mr. Bonn, who is here on behalf of the objectors, argues that is a sort of straw man, that it is not a real concern; based on some other wording in the section, he is saying that if it is a gift, it does not matter whether it is to the board or the municipality.

I would fairly have to say that I do not purport to give you a conclusive legal opinion that the deed to the board as opposed to the municipality is illegal and invalid and so on. What I do say, and there were other solicitors before me in this chain who have come to the same conclusion, is that there is considerable uncertainty as to whether the deed to the board as opposed to the municipality is legal, and that left the municipality somewhat concerned as to the status of those lands.

For example, if we assume that if the section were properly interpreted it was not supposed to be conveyed to the parks board but to the municipality, the next question arises: How do you fix it? Can you fix it simply by having the board do a deed to the municipality, or does that mean that the initial conveyance to the board is no good at all and you have to go back to whoever originally gave it to you? Some of those people are obviously long gone.

It got to be kind of a nightmarish concern for the municipality, not because somebody had decided; there is no court case which says positively it is invalid, but based on the wording there was a real, live concern. That is one of the reasons for the provision in the bill transferring the assets to the municipality and deeming that they were properly acquired in the first place.

Mr. Pollock: You made one comment that there are some people out there who think that once it became the property of the municipality, the municipality might do certain things with that park land which the original donators or the parks board did not want. I have heard rumours that there is one municipality which had land donated to it and is offering for sale three lots of that property. It is not Trenton; it is another municipality. Anyway, I have heard that.

Mr. Reynolds: There are two answers to that. One is that concern was part of the reason for our inclusion of these provisions for advance notice in the bill, so that people who objected could make those objections known



and turn it into a political issue, if necessary.

The other is that most donations include a condition that the lands being donated must be used for parks purposes, and those conditions are valid and are effective and prevent the municipality from using the lands for other than parks purposes. I suppose it does not mean, at least in theory, that the municipality cannot decide it does not need it for parks purposes and sell it, but again, that it is why we have the protective clauses in the bill saying that if council wants to sell, it has to give public notice, and it will take the heat.

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Mr. Pollock: But, in other words, it still could. That is basically what I was thinking about, that unless it was really written right in the agreement when they donated it, council has that option to sell it if it so wishes.

Mr. Reynolds: Yes, and I suppose, to complete the answer, it is probably worthwhile to compare it to the situation right now with the parks board in existence. Although the parks board right now is appointed on a three-year cycle, under the Public Parks Act it could be appointed as frequently as yearly. If the parks board decides to sell park land, it does not have to have a public meeting. It does not have to tell anybody. It can do it on a dark and rainy night.

So if council really wanted, the way things stand now with the parks board in existence, to get rid of land, it could be done. Council would just load the board and then have the board do it on some dark and rainy night. At least the structure that we are proposing to put in place means that if any council wants to try to dispose of park land, it has to come out in the open. It has to give prior notice and give opponents an opportunity to speak to it in a public forum.

As I said before, my judgement—and I am no expert, I suppose, in that field—is that in this day and age a council is going to be extremely leery about disposing of park lands when it has to be made the subject of open public debate in advance.

Mr. Pollock: But the parks board could not get rid of land if it were written right in there that it is to be used for park purposes. They could not get rid of the land, could they, on some dark and rainy night, as has been mentioned?

Mr. Reynolds: They could dispose of it to the same extent we could. The provision in the Public Parks Act which would govern the municipality's ability to dispose of it is the same wording as would apply to the parks board. All that is required is this—I can read you the subsection: "If it has more land than is required for park purposes, the board may sell or otherwise dispose of the land..."

It could dispose of it if it decided it did not need it any more. You are right in the sense that neither one of them could use it for something else if it were in the deed to say that, but there is nothing to stop them from just selling it.

Mr. Chairman: I take it that if something is zoned a park, and it is sold, subject to a rezoning, it is not worth anything to anybody except as a park?

Mr. Reynolds: True, although again, I guess it gets to be a political as much as a legal question. If a municipality sells park land it can only do it on the basis that it is not required for park purposes.

It would have some difficulty in then refusing an amendment to the zoning bylaw to the purchaser, because it had just finished saying, "We don't need this for a park any more." The same problem, of course, applies if the land is sold by a parks board.

Mr. Chairman: Presumably the city would have the right to insist that the rezoning be to a particular type, i.e. it might be obliged to go from a park to agricultural use, but it would not necessarily be obliged to go from a park to heavy density, residential or industrial use, for example.

Mr. Reynolds: So you would not be obliged to do anything.

Mr. Sola: Mr. Pollock asked basically all the questions I was going to ask, but I guess on that last comment you made, does that apply to donated land as well as acquired land, purchased land, the ability of the board to sell? Or is that just the ability of the board to sell land that it had purchased?

Mr. Reynolds: No, the subsection says simply, "If it has more land than is required for park purposes, the board may sell or otherwise dispose..." It does not confine it as to how it came by the land.

As was mentioned, there are a lot of deeds to municipalities for park purposes that say, "This is conditional on the land being used only for park purposes," so that certainly the municipality could not, or the parks board could not convert it to another use.

But it is not clear as to whether that kind of a condition would prevent your selling it if it were declared surplus to park purposes. You would have a tough time finding a buyer, I think, in a practical sense, because the condition would still be running with the land. It could only be used for park purposes and the buyer would also somehow have to get around that even if he could buy it.

Practically speaking, the likelihood that either the municipality or the parks board is going to be able to dispose of land, subject to those kinds of conditions, to be used for any other purpose, is pretty minimal.

Mrs. Grier: I meant to ask this earlier. Looking at section 7 of the legislation on the parks committee, I see it is appointed, how it is appointed, and its term of office, but nowhere in that section or anywhere else in the legislation do I see any purpose for the parks committee.

Mr. Reynolds: That goes back to part of the history Mr. Neumann mentioned. When we originally wrote the bill, in one of its early revisions, the committee was established on the idea that, first, there had to be a parks committee, that council was forced to establish one, and second, that no piece of parks land could be sold without the committee's consent. That was the purpose for it being put in there originally.

After discussions with Mr. Chipman, it was concluded that that is not proper because it is, in effect, setting up a separate authority from council. So that consent or veto power, if you like, was deleted. The subject was discussed at the time, and it was decided that in that case, maybe we should



just abolish the thing altogether. So there is no mention of a parks committee. If council wants to have a parks committee, it can set one up like any other.

It was decided to leave the section in there forcing the municipality to set up a parks committee so that people who had concern would have—I think the word used by Mr. Neumann was "comfort"—some comfort that there had to be a committee whose sole purpose in life was the parks system, which could presumably function as a public forum for people who had concerns in which to raise those concerns.

I agree that there is nothing in the act that specifically assigns any powers to the committee, but that is because of the discussion in which it was decided that it was not really appropriate to assign it any power.

Mrs. Grier: But if they are looking for comfort, there is nothing here that tells me the parks committee, other than by name, has anything to do with parks. It could be in charge of garbage collection, or it could do nothing. Maybe it is more a question for Mr. Chipman, but surely it could indicate that the purpose of the parks committee shall be to make recommendations to council with respect to the operation, management, or disposal of parks.

Mr. Reynolds: Actually, I think in one of my earlier drafts I had language like that in there to give some content to the parks committee's functions. Again, as a result of some discussion—it may not have been with Mr. Chipman; it may even have been with the legislative counsel office—it was thought that it was more consistent with the normal operation of a municipal committee which has its duties defined by bylaw not to get into that kind of detail in the bill.

Mrs. Grier: Should you not then have said that the duties shall be defined by bylaw?

Mr. Reynolds: You do not need to. Council can define the duties by bylaw in any event, as it does for any municipal committee. At least, that would be my answer.

Mr. Chairman: Are there any further questions by members of the committee?

That part having been concluded, I would like to thank the applicants. Do not go away. Perhaps you could move to an adjacent table, and I will allow the people who want to express a different view to come forward. If you want, you can sit along here on the right. Depending upon what is said, you may or may not feel that you want to make some particular rejoinder.

I have one gentleman coming forward. Would you identify yourself, please?

Mr. Bonn: My name is George Bonn. I filed a brief on behalf of Paul Tripp and others.

Mr. Chairman: That is the document I am holding here?1

Mr. Bonn: It is.

Mr. Chairman: This is the one I referred to earlier.

Is there anybody else sitting in the audience who wishes to make a representation? All right.

Mr. Bonn: In the second last row are five persons of the group that Mr. Tripp retained me for. We have Dr. Les McDonald, who has been a Trenton physician for many, many years. We also have Jean Bernice Alyea, who has a particular interest in being here as it is her father, O. G. Alyea, who donated the lands, the very substantial lands.

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Mr. Chairman: You can sit, by the way. We do not require you to stand.

Mr. Bonn: I was standing so that I could turn to them when I was pointing them out.

Mr. Chairman: OK.

Mr. Bonn: Her father, O. G. Alyea, donated the lands which form a substantial part of the Trenton park lands. She could tell you directly, but she has told me to pass on to you that; yes, it was well known to everybody in the 1950s when her father donated the land to the parks board that he wanted the parks board to have the land, and not city council. It was well known locally. It was not something that was done, as indicated by Mr. Reynolds, without the knowledge of city council or anybody else. It was a topic of local discussion at that time, and it is very, very substantial park land indeed.

In addition, we have here Miss Marion Baker from the city of Trenton. She is also a long-time resident and was on the parks board, I believe, for many years. Is that right, Marion? Yes. And we have Mrs. Jean McDonald and Mrs. Jean Mary Hutchison, who are on both the parks board and city council.

By way of introduction of Mr. Tripp and to explain his absence, Paul Tripp is the present chairman of the Lower Trent Region Conservation Authority. Unfortunately, he is obliged today to be before a parliamentary committee in Ottawa on a conservation authority matter that is of local concern. It was simply impossible, of course, for him to be in two places, and he asked me to explain his absence for that reason.

Mr. Tripp has a longstanding interest in both matters, since for many years he had been a member of the city council in Trenton and also a member of the Board of Park Management of the City of Trenton. He was latterly the chairman of the board of park management, so he sees the issue from both sides, and he strongly supports the objection to the bill.

With those introductions out of the way, I will take you through the points I wish to make. I will not read the brief word for word. I trust that each of you might do that at some time.

Mr. Chairman: Before you get too far, Mr. Bonn, I noted earlier that there are two sets of concerns. I think you can appreciate why I am not too concerned about what order you do them in, but it would be helpful if at some point you would indicate either that should the bill pass, its current form is not objectionable, or alternatively, that you have objections and what they are. I appreciate that the thrust of your brief is designed to shoot down the whole bill.



Mr. Bonn: It is that. This bill, in my respectful submission to the committee, should not see the light of day. It should not be reported beyond this committee.

First, I will deal briefly with some of the specific provisions of the bill. The first thing I deal with, I suppose, is that section—and it almost goes to the general purport of the bill; I believe it is section 5—that deems the council to be a board of park management for the purpose of the Public Parks Act.

That just is inherently illogical. I suppose if one puts a legal mind to that, it would create in the future a legal nightmare, because the whole thrust of the Public Parks Act and the whole thrust of a board of park management is to create an independent agency in the municipality, with the approval of the electors.

By the way, that approval has to come by way of a petition of the electors and then a public vote of the electors. The whole thrust of the Public Parks Act is to set up that kind of independent agency to look after the park lands in the city, separate and distinct from the council. That is the purpose of the act, to take it away from the council and give it to an independent agency, if the electors see fit to do so. Yet this act would say we are going to abolish the Board of Park Management and therefore the whole Public Parks Act intent for the city of Trenton, but we are going to make the council a board of park management.

It is just so fundamentally illogical that it is a staggering thing when you think of it in the context of this bill. What is the purpose of making the council a board of park management? You would then, I suppose, pick and choose specific provisions of the Public Parks Act that might be able to apply. You could probably isolate some of them and pull them out and say, "Well, maybe that can apply;" in some sections, you might look at them and say, "Maybe half of this section could apply," but the other parts are senseless in the context of abolishing the Board of Park Management in the Public Parks Act and then making the council the Board of Park Management.

The other thing I want to point out is section 7, of course, which Mrs. Grier pointed out; namely, that it sets up a committee but gives it absolutely no mandate and no terms of reference. I think what that is really is an attempt to give the perception to those who oppose the bill that there is going to be some buffer protecting their parks from whatever actions council may take for nonpark reasons. As Mrs. Grier pointed out, it is a skeleton; it simply says it "shall" have a committee.

As far as the specific sections of the bill are concerned, those are the points I would have to make on it. Obviously, the full thrust of my submission is to the basic point of the bill itself. Before I review some of the details in my brief—

Mr. Chairman: I can just indicate to the counsel who are here for the government that at some point, whether now or later, you can address yourself to those two issues that have been raised in terms of the content. One is on section 5, and I guess the other is to a section that does not exist. There is no section, according to Mr. Bonn, which adequately sets out what that committee ought to be able to do or what its mandate is.

I am mindful of the fact, and perhaps you will be able to comment then, that in the compendium for what was then Bill Pr30, An Act respecting the City

of Belleville, there is a counterpart to section 5 of Bill Pr40, which is before us, so you can perhaps comment at that time.

I am sorry to interrupt, Mr. Bonn, but I want to give them some chance to get ready.

Mr. Bonn: Not at all. This is your meeting.

Mr. Chairman: All right, Mr. Bonn, please continue.

Mr. Bonn: Let me respond to one topic that came up during the submissions of my learned friend, Mr. Reynolds, which was that the parks board is unfettered in its ability to sell land. He talked about how some dark and stormy night a loaded parks board could sell some or all of Trenton's park land.

First of all, let me go to the political answer to that. We, in Trenton, have had a public parks board by vote of the electorate for 104 years now, since 1884. There never has been an occasion when there was any controversial sale of park land or conversion to other use. There have been the occasional instances through the years where a small part of a park would be exchanged for other land where the other land was more beneficial for park land than a small part of a park taken off for other reasons, for commercial development.

For those of you who know Trenton, there is a large park called Hanna Park, some 50 or 60 acres, largely wilderness in some parts. A very small five-acre section abutting a main street was given to Quaker Oats years ago to build a factory on, but in return the parks board got additional, much more beneficial park land elsewhere in the city. That has happened over the years, but never has the parks board sold off any land in the sense of a controversial sale or conversion to other use, and the proof is in the pudding: it just has not happened.

Second, in 1955, bylaw 1107N, which is an appendix to my brief under tab 2, was passed by the city of Trenton under public pressure by the electorate of Trenton. Under that bylaw, council enacted a bylaw which designated much land owned by the city that was not park land as park land and provided that none of it or other park land could be sold without a public vote. That is the current, in-force bylaw of Trenton, and what has not been mentioned here is that this bill also repeals that bylaw. We are not just talking about transferring—the council has come to you with a request that it wants control of the park land, that it will not sell it, but for some reason it is also asking you to pass, as part of this bill, a repeal of its own bylaw of 1955 which says it cannot sell public park land without a public vote.

I will turn to some of the comments in my brief dealing with the constitutional issue. I am not here to convince you or persuade you that the bill definitely would be unconstitutional, as a breach of section 15. I am here, however, to persuade you that there is a real live issue as to whether it is unconstitutional.

I say it is a real live issue because, of course, section 15 of the Constitution we now have says very clearly that, "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination..."

That section did not come into place until 1985 and therefore it would not be applicable to those acts that were passed before 1985 for other city



councillors who wanted this kind of private legislation. I believe it has been mentioned that there are some 14 other bills passed over the years, but the last date I heard for Belleville was 1984. That, of course, was before section 15 came into effect.

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What you will then be doing by this law is taking away from the Trenton city electors a vote they now have under the general law of Ontario. The general law of Ontario is, of course, the Public Parks Act. That is a law of general application across all of Ontario. It has been on the books since 1883.

By passing this act, what you are doing is telling the voters of Trenton: "We are taking you out of that act. We are taking away your vote that every other municipality in Ontario has." Every other municipality in Ontario has that vote, either to put in a parks board or take one out. This bill says to the Trenton electorate, "We are going to take your vote away."

It seems to me, without spending some time to try to convince you of the exact proof needed for a decision by a court, that has got to be discrimination against Trenton voters. You are taking them and you are saying to them, "We are going to take away a right from you that the voters in Kingston, the voters in Peterborough, the voters in Toronto and the voters in Thunder Bay have." Therefore it is a very live issue.

In my respectful submission, the committee should think long and hard before reporting to the Legislative Assembly a bill that very well may be unlawful under the Constitution.

Mr. Chairman: Mr. Bonn, I do not want to stop you from expressing the case as you wish, but section 15 of the charter, of which you have very kindly provided a copy in your brief, indicates that it is, "without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

Mr. Bonn: I can respond to that.

Mr. Chairman: I never noted in your comments anything in one of those categories. I do not think that residing in Trenton or not residing in Trenton falls into one of those categories. I would be helped if I could understand a little better.

Mr. Bonn: Your concern is very legitimate because I had that concern when I first compared this section 15 with the bill. My review of the law indicates very clearly that courts across Canada at all levels have established very clearly that the categories of discrimination particularized in that section are not exhaustive of the section.

In other words, they are particular categories mentioned, but the courts have interpreted the section essentially as though it stopped at discrimination, without discrimination. You do not have to come into one particular category to put that section 15 before a court.

Mr. Chairman: I do not want to prolong this, but my understanding is that you have to find an element of discrimination that is of sufficient gravity that the court will accord it, i.e., it will say—and of course it is set out—that national or ethnic origin is one category.

But if you are telling me that the category is whether or not you reside in the city of Trenton, I have a hard time believing a court is going to grant that as a category.

Mr. Bonn: No. What the court is going to rule on is whether it is contrary to the section to select the voters of Trenton and say to them, "You do not have a vote that every other citizen of other communities in Ontario has." It would decide whether that is permissible discrimination under the charter. On public policy reasons it would be decided.

I cannot, of course, and nobody in this room can predict what a court would do with that argument. But I suggest to you it is a very live issue.

Mr. Chairman: We can predict. We just may not be accurate.

Mr. Bonn: I suppose that is how we, as lawyers, make our money. If everybody knew what was going to happen with a court, they would not need us.

Mr. Chairman: It is rather like betting on a horse-race sometimes, I suppose. I am sorry I had to interrupt you.

Mr. Bonn: No, I am glad you did because that issue presented itself to me when I reviewed it and it was very quickly answered by a review of the decided cases. I will just reverse a bit and go to the first couple of pages of the brief about the background for those that are not familiar with it.

The Public Parks Act was put in place in 1883. We all know what it is for, I think. Very shortly thereafter, one year later in 1884 the voters of Trenton on a petition to the council caused the Board of Park Management, by adoption of the Public Parks Act, to be in force in Trenton.

As I mentioned earlier, it deals with the installation of the Public Parks Act in this particular community by a public plebiscite. If the public plebiscite approves the bylaw then it has to be finally passed by the community. That law is 104 years old but it is still the law in Ontario. Any community which now does not have a board of park management can go through the same process and establish one if the voters choose to do so.

My friend put to you a situation almost of two contestants in the city of Trenton, the parks board and the city council. That is unrepresentative of the situation in Trenton. Page 3 of my brief sets out some of the statutory provisions which deal with the relationship of the Board of Park Management and the city council. You will see that generally the management, control and operation of public parks in the community come under the jurisdiction of the Board of Park Management.

It recites further that the board can pass bylaws dealing with the uses of the parks. "The board shall keep in its office all books..." and records and that kind of thing. You get to section 13 which talks about the board acquiring "by purchase, lease or otherwise the land..." and about, "The conveyance of all land...so acquired by purchase or lease shall be taken..." in the name of the city. It goes on to say that, "If it has more land than is required for park puposes, the board may sell or otherwise dispose of the land..."

It was touched on earlier about the funding—the board shall once a year estimate what it needs to run the parks and approach the council with its budget. It is not like an education budget or a school board budget. Council



has complete discretion. The board can come to it with a budget of \$100,000 and council could say, "No, you get \$50,000."

The council has that very, very tight control over the Board of Park Management, in addition to the appointment of the board, of course, as mentioned by my friend Mr. Reynolds. It is wrong to say that the Board of Park Management is off in left field, completely independently and running the park systems of the city without any control or any fetters whatsoever. That is just not true. There is ultimate control in the hands of the council.

At this point I suppose it would be appropriate to say that the applicant is the city of Trenton in the sense that five out of seven or four out of seven councillors voted to present this bill and make its application. This bill has been moved forward by the mayor of Trenton, his worship Mayor Robertson.

It was never a topic of discussion or conversation or public issue during the 1985 fall election. It was never brought up. As soon as that council was installed, within three or four weeks Mayor Robertson went public with the idea of abolishing the parks board. The reason advanced in the first headline is that the parks board is illegally holding land and the only thing we can do to correct that illegality, and it was called an illegality, is to abolish the parks board. Since this time it has been Mayor Robertson's push to have this private legislation.

I just want to dispel the perception that when the city of Trenton is coming to you for this legislation, you have the community of Trenton coming to you and saying, "We want this legislation." You have four or five members of the council, the majority vote, coming to you with the pushing of Mayor Robertson to present this legislation.

We also have to keep in mind, of course, that Mayor Robertson and the councillors who voted for it are not disinterested people. What they are asking for is legislation which will transfer to them powers and authorities which they do not now have but which are in a semi-independent board. They want that power and they want that authority without any fetters of the Board of Park Management.

We can get into a long debate but it is more properly kept within the context of debate in the city of Trenton and a plebiscite. We could get into a long debate as to why council wants this authority. I can only say that it has been reported that Mayor Robertson has made comments such as, "Fraser Park should be a parking lot and Bayshore Park should be developed for housing."

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Mr. Chairman: Where are they?

Mr. Bonn: Fraser Park is a small park of about maybe one quarter of an acre that is in the heart of downtown Trenton on the banks of the Trent River. It is on the street behind the main commercial street. It is a nice pretty little park with flowers and trees. I believe the veteran's memorial is very close by. It is not very big but it is close to the commercial area. Mayor Robertson has been reported as saying it should be a parking lot.

Bayshore Park has a rather large acreage. I am just guessing here from visualizing it, it is maybe 15 or 20 acres of undeveloped land which is basically a flat grassland a short distance away on the bank of the Bay of

Quinte.

Mr. Chairman: Were either of these lands part of the parcels that were donated on or about 1952?

Mr. Bonn: Miss Alyea has advised that Fraser Park was donated. Bayshore Park, she simply recalls, has always been in the parks board and she is not sure where it first came from.

Mr. Chairman: And Fraser Park was part of the donation that is alluded to—

Mr. Bonn: Not of O.G. Alyea's donation. She tells me that it was a—

Mr. Chairman: But a donation from some other source?

Mr. Bonn: —donation from another source.

Mr. Chairman: I am appreciative of being filled in on the history of Trenton.

Mr. Bonn: At any rate, there is this underriding concern that if you have a development-minded council without any fetters from a board of park management, it may well decide to sell off some of the park land.

Every councillor, as everybody in this room knows, is under many pressures from all sides, not just to protect park lands but to get new industry into town and all the other kinds of things. I suppose that is one of the basic themes and purposes of the Public Parks Act which allows the setting up of an independent agency.

I will touch upon at this stage my friend's submission that there is a protection, namely this idea of a public hearing that is built into it, that before selling any park land or converting to any other use, city council must give 30 days' public notice or whatever it is and call a public meeting.

But stop for a moment and think about it. That is it. They could have 100 people at the public meeting saying, "We do not want you to sell that park." And they could say, "Fine, thank you very much." They are not fettered in any way. There is no appeal for any decision to the Ontario Municipal Board or anybody else. They can simply say: "Thank you very much for your input and your opinion. We will make our decision and let you know."

Having said that, I concede and acknowledge that the Board of Park Management could do the same thing. But I simply revert to what I said earlier, that it never has in 104 years. Quite clearly the people who have volunteered to serve, unpaid, on the Board of Park Management are people who are interested in parks and the whole system of parks that Trenton has. Improper, improvident, or ill-advised conversion or sale of park land, obviously, is much less likely to happen than with that control placed somewhere other than the Board of Park Management.

That gets us away from what I think the the focus of attention should be. Should the decision be made here to abolish the parks board in this Legislative Assembly or in this committee, or should the decision be made in Trenton by the voters of Trenton?

Now, my friend referred to the process as being archaic, costly and



cumbersome. First of all it may be cumbersome, perhaps even archaic in some sense, but then democracy is in some sense cumbersome and I suppose in some sense archaic. It is much easier to have one person make all the decisions. But in my respectful submission to this committee it would be dead wrong to take away from the voters of Trenton the power to make that decision in the context of the debate that they might have.

Mr. Chairman: Just give me a moment please, Mr. Bonn.

I would like to have a recess for about five minutes.

The committee recessed at 12:36 p.m.

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Mr. Chairman: We will resume our proceedings. If I can call on Mr. Bonn, he has agreed to continue with his proceeding and, hopefully, we are going to do this with some brevity. I will be calling on the government just to represent its views, again with brevity; and if there are necessary comments or questions from others, we will deal with those too with brevity.

Mr. Bonn: Thank you. I will touch upon the points. I would then hope that the committee members will read in more depth what I have got in the paper.

My friend referred to the cost of a public plebiscite. I simply say that we are now heading into a municipal election this November, and this would be the perfect forum for public debate in Trenton on the political pros and cons of having an independent agency look after the parks.

The question can be put on the ballot at very minimal cost, I do believe, and so I suggest that if there is any concern about the high cost of a public plebiscite, (1) even if there were a high cost, there is no reason to dispense with a public vote and (2) there simply will not be a high cost to let the voters have their say, which, under the general law of Ontario, they are entitled to have.

Surely to goodness there should be a fairly heavy onus upon the applicant who comes before you and asks you to take the vote away from the city of Trenton, take the general law of application away from the city of Trenton voters, impose this on the city of Trenton voters and abolish the agency that they voted in and have kept going for 104 years.

As I understand it, the present senior legislative counsel for Ontario, Donald Revell, has written an article on private legislation, and one of the key points he makes, as shown on page 9 of my brief, is that private legislation should not be brought about to provide a remedy which is available by other means. It is a pretty heavy sledgehammer to use, because there is another means, and that is, of course, the Public Parks Act. So I suggest to you that this private legislation is misplaced for that reason.

As far as substantiating their case is concerned, in my respectful submission, the applicants have simply not substantiated any kind of heavy onus or mild onus or lightweight onus at all. The reasons they give in their compendium simply do not obtain; they do not exist. The reason advanced for the first objective, which is to end the operation of the parks system by a separate board, is simply, "We want to end it because we want the city to take care of it." That, of course, begs the question of why they want the city to

take care of it.

They then go on to say there are two reasons for that: (1) the parks system can be operated more effectively and efficiently as a department of the city; (2) it is appropriate that the elected council have direct control and authority over it.

Let us deal with number one: effective and efficient. "Effectiveness" and "efficiency" are very strong words to use. Of course, you have before you absolutely no evidence whatsoever, no study, no analysis, no informal opinions of any kind other than the submissions of council that there can any efficiencies or effectiveness obtained by abolishing the board of park management.

On pages 11, 12 and 13 of the brief I have listed for you the ways in which the organization and the management of the board of park management has been incorporated and integrated with the operation of the city.

On a day-to-day administrative, operational basis it is operated and conducts its business as an integral department of the city. It is all recited there how the moneys are looked after by the city, the invoices are paid by city cheques and the payment of invoices is passed by the council, along with all the other passing of cheques, payments and invoices as an integral part of it.

All the motor vehicles and equipment are registered in the name of the city and insured under the name of the city. All staff and workers of the board of park management are employees of the city; their wages are paid by the city, they are incorporated in the computer system of the city and all employment benefits of the employees are city employment benefits. All expenditures of the board are approved by the city council.

On the policy end of it—a small matter, I suppose—but if somebody applies for a beer tent in a public park in Trenton, city council makes the decision. All bylaws of the board of park management are submitted to city council for its approval, and they have never been implemented if city council has not approved.

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All salaries of board of park management staff are determined by city council by its power over funding. Many times in the past, I am advised by the present director of parks, board of park management decisions on salaries have been reversed through the budget process if city council did not agree with them.

Most important, I suppose, all directives and policy memoranda issued by the city administrator go routinely to the director of public parks or the director of the board of park management and they are followed by the director of the board of park management.

It is just absolutely wrong and incorrect to sit here and say, as my opposition has, that effectiveness and efficiency will be gained operationally by abolishing the board of park management. It is just wrong. It will not.

As the director remarked to me the other day, many times over the past two years when this has been festering with the city of Trenton's sense of being pushed forward by a few members on council, the plaintive plea has been



put to them: "How can we change? What is going to change? How are we going to be more effective?" No response comes back other than the vague sense, "Well, we will be more effective if we get control."

On the political end of it, the political reason given to you is that, "...it is appropriate that the...elected council have more direct control and authority over and responsibility for the operation of the parks system." My friend called that the political reason.

My goodness, if ever there was a reason to leave it to the voters of Trenton, that is it right there. Why should that decision be made, first, in this committee here in Toronto and next in the House by the members across Ontario when in fact it is a very local matter. Surely, the political pros and cons of that local matter should be determined by the voters of Trenton.

Let me finish with some comments on this question of land ownership. My friend said you may think it is a straw man. It is more than a straw man; it is a scarlet red herring. I thought about this when I did my brief in the last couple of days. I used the word "ludicrous." I thought about it and I took it out and I put it back in and I took it out, and I said: "No, I am going to leave it in there because that is what it is. It is absolutely ludicrous to suggest that you have to abolish the parks board because title to some land is in the name of the parks board and not the city. That just astounds the mind when you say that is why you have to do it."

One, these lands that are in the name of the parks board were donated to the parks board because the people who owned the land wanted to give the land to the parks board. Are you then going to say to those people, "No, we won't take your land"?

Two, there is a legal argument that can be made—I am not here to argue legal arguments, but there is a legal argument that can be made, touched upon in my brief, that yes, indeed, a board of park management under the Public Parks Act of Ontario can hold land in its own name except if the land is acquired by purchase or lease.

If you look at subsection 13(1) of the act, it says, "The board may acquire by purchase, lease or otherwise the land"—"purchase, lease or otherwise." That is an outright authority in law to acquire land. Then you go to the restriction, "The conveyance of all land...so acquired by purchase or lease shall be taken to the municipal corporation."

It seems on a very plain reading of it that if you buy it or you lease it, that is, you spend public money for it and that money comes from the city, it has got to be taken in the name of the city. There is good reason for that. If the public provides the money for it, then the city perhaps should own it, if it is city money. But if you are given a gift of the land, there is no reason not to say that the board of park management should have it in its own name. So there is a strong legal argument that can be made that there is nothing wrong at all, that it is entirely legal and proper for that donation to have been made in the board of park management's name.

Then I go on to recite, and you will read on page 17, a section of the Cemeteries Act of Ontario that seems to indicate that boards of park management can in fact own land. It is in the Cemeteries Act. It is a little corroborative point.

Let us go on to the next point and say: "OK. Assuming the board of park

management ought not to have the land in its name, to say it is an illegality is absolutely ludicrous. To say it is an impropriety is laughable. To say perhaps it is a very, very minor irregularity is probably touching more closely to home, a very minor irregularity. I will cite some cases where the courts have dealt with the status of board of parks management.

Putting it at the very highest, the irregularity might be that the Board of Park Management is then required on demand of the city to transfer the title to the name of the city. I can tell you right now that the Board of Park Management of Trenton is completely willing to do that. It never has been asked to do it, but tomorrow would sign the deed to these lands over to the city. The board does not care whether they are in its name or in the city's name. In 10 minutes in my office tomorrow, I can do a deed, one page, where the board transfers title to the city, and the board would have no objection to doing that.

I touch on that because this is the reason that was trumpeted in the headlines of the Trenton Trentonian newspaper in January 1986, as to why the board had to be abolished. Illegal holding of land—I am not quoting the headline, but I remember it in big black print—and therefore, the board must be abolished. I laughed at it then and I laugh at it now, and any person who analyses it to say that is an illegality requiring destruction of the board is just out in left field.

In conclusion, I will simply say that this board has been there for 104 years in the city of Trenton. It has always been staffed by generations of people who have an interest in and a feeling for the parks. They have dedicated innumerable thousands of hours to the park system, and there has been no public upswelling or call in Trenton for abolishing the Board of Park Management, and in my respectful submission, there is certainly no public need for taking away from the Trenton electors their right to determine that question by a vote which, of course, could be held this November in the context of the municipal campaign.

It is my respectful submission, in closing, that this committee should decline, refuse to report the bill to the House. Obviously if you report it out with the idea, "We will put it to the assembly and see what happens by vote," it is going to require the opposition to the bill to, of course, communicate with every member of the Legislative Assembly to try to put their points of view that way. In my respectful submission, this committee should refuse to report the bill to the House.

Mr. Chipman: I will be very brief. The government's position, as expressed by Mr. Neumann, was that there was no objection to the bill. That position is unchanged.

Mr. Bonn: That position is?

Mr. Chipman: Unchanged. The government indicated no objections to it.

Mr. Chairman: The technical issue. Do you have any comments from a legal point of view over this business, the alleged illegality, that came out of left field?

Mr. Chipman: There were a great many comments that came up in the course of the morning with respect to alleged illegalities. There were two specific points you asked me to address myself to. One dealt with the wording of section 5, "The council of the corporation shall be deemed to be a Board of



Park Management." It was suggested that was maybe an overly broad-brush approach. Those words were proposed by the applicant, by the town, and we considered them. The applicant's concern was to ensure that at any future time there should be no question that council was exercising the powers that might otherwise have been exercised by the Board of Park Management. We had no particular objection to that, as the applicant felt quite strongly they wanted to have that broad wording in place.

With respect to section 7, the powers of the parks committee, Mr. Reynolds referred to discussions we had. I think it is fair to say that we indicated to him that we saw no reason for section 7 being in the legislation, as the council, if it took over the powers, could establish an advisory committee at any time to advise on parks matters. We were advised that the applicant wanted to have this provision included basically to give words of comfort to the applicant and to give an assurance to the people of Trenton that a committee would be established. From the strictly legal technical point of view, there is no need for that provision.

1300

Mr. Chairman: Thank you. Is there any view on behalf of the city to address the objections that have been raised?

Mr. Reynolds: Yes. In doing so, I have the obvious lawyer's instinct to answer every point made, whether or not I think there is any weight or any merit to it. I obviously take into account the time and what you have already said about the time. I will attempt, as much as I can, to just address the thrust of what Mr. Bonn has said and not go through all of the points, although please do not take it that if I do not deal with a specific point that I concede or agree.

Mr. Chairman: That is a great way to put it. I do that myself in trials.

Mr. Reynolds: The heart of the objection, as I understand it, is that you should not act on the request of the elected municipal council to abolish the board, but rather should leave it to be decided by a vote of the electorate. As part and parcel of that, phrases were used such as: "a few members of council;" "The mayor has been pushing it;" "They do not represent the municipality or the community;" and "They are not the community," I think was a phrase used at one point.

I checked with Mr. Fagan and I understand that the customary votes on these resolutions were in the neighbourhood of six to one. It is also worth noting that because this matter went back and forth so often between myself and the council office and so on, council, I think had to pass resolutions about five times to the effect that: "Yes, we still want to go ahead and we are content with this new wording. Proceed." In other words, council had to think about it and vote on it at least that many times over that long a period of time.

It is not some pet project of some one person that has been railroaded through. It is the determination of the duly elected council. I cannot say it is unanimous, but it is awfully close, obviously. I really had trouble, and in my submission you should too, with the comment: "They are not the community. Let the community vote." They are the duly elected representatives, under our whole legislative and political scheme, to represent the interests of the city of Trenton.

If we start to say, "They are just a bunch of councillors who have this thing, and they are not representative of the community; we should go ask the community," where does that end? I suppose we can say: "The Legislature is just a bunch of MPPs. They do not represent the community. Why should we not go ask the community?"

Mr. Chairman: The opposition tells us that all the time.

Mrs. Grier: On Sunday shopping, we are doing it.

Mr. Reynolds: Please, I do not want to get caught—

Mr. Chairman: I take it, though, and I do not want to put anything unfair on you, that we do not have the benefit, for instance, of a member of council to come and tell why he or she is in favour of it. Obviously, you were not elected and nobody could easily expect you to come to do that.

Mr. Reynolds: No. Obviously, all I can pass on to you is the basis of my instructions, the heart of which is the desire of council and the belief of council that it is more appropriate that control over the operation rest with the elected body.

Although Mr. Bonn went on at length to refer to various provisions and procedures to say that they are not that much different from a normal department, we keep on coming back to section 3 of the Public Parks Act which makes it clear that as long as the parks board is in existence, it, rather than council and its senior administrative officers, runs the day-to-day operation and staffing of the park system. That is the heart of the problem and it is the heart of the position that I have been instructed to convey by council, that they feel that that control should reside with the elected body not an appointed body.

The whole heart of objection that is being made, in my submission, is really objectionable in the sense that it is saying that this municipal council, which is coming to you as it is supposed to do on behalf of its municipality, that its request should be disregarded and that it should be left to a plebiscite or whatever.

Under our political legislative system, as I understand it, there is a greater tendency, as it was mentioned, to say to elected bodies: "All right, you make the decisions. You are responsible. We are going to accept what you say as a representative of your constituency and you will then have to justify that and bear the burden of it when it comes up in time for you to be reelected." Rather than referring all these points out directly to the electorate.

Mr. Chairman: I just want to be clear on this, but I take it there has been nothing to prevent the council, either during the past two years or more that it has been dealing with the issue or now from exercising its mandate to take off from the board all those persons who are not doing what perhaps council might want and reappointing individuals who would vote in a way more acceptably—

Mr. Bonn: The problem there is there is no issue locally about the parks board not doing what it should do. There is no issue.

Mr. Chairman: Hold on for a moment, Mr. Bonn. I want to allow him an opportunity to respond. Is there anything that prevents the council from doing that now?



Mr. Reynolds: From influencing the composition of the board?

Mr. Chairman: Yes. Appointing residents who will do whatever they want in a better, more effective and more appropriate way.

Mr. Reynolds: I suppose the answer is no, there is nothing to stop council from exercising its appointive authority in particular ways. But that would appear to be a particularly roundabout way of achieving the objective of bringing the operation within the direct administrative control of council and its officers.

Mr. Chairman: I may be completely wrong, but I would have thought that would have been the terribly direct way of doing it. If you think it is roundabout, I will not quibble over the word.

Mr. Reynolds: I suppose roundabout in the sense that it would be achieving something. Perhaps it would be achieving it, but indirectly. I suppose I could argue that it is less upfront than simply saying, "We want to run this operation directly," rather than appointing one's lackeys, I suppose, to do that for you indirectly. I guess that is the best answer.

Mr. Chairman: I did not mean to suggest that if some people happened to agree with the majority view of council they were necessarily lackeys.

Mr. Reynolds: I suppose some might say so.

Mrs. Grier: Are we all going to get questions?

Mr. Chairman: No. I realize I am now doing what I should not be doing, which is prolonging this committee meeting. I have heard from you with respect to a number of issues. Is there anything else that you need to cover? Would you respond to Mr. Bonn's points?

Mr. Reynolds: As briefly as I possibly can. There was a comment about a bylaw passed in the 1950s to the effect that council could not dispose of park land without a public vote. Since this private bill would repeal that, then presumably there may be some sort of hidden agenda in terms of disposition of park lands.

I would have to tell you that one of the main reasons that we included a provision repealing that bylaw is simply because it is one of the bylaws that is related to the establishment of the parks board. It was our understanding—and, Mr. Chipman, correct me if I am wrong—that the normal practice and procedure that is desired is that all of these related bylaws be repealed when the parks board is itself being terminated.

The other point I would say is that, in my opinion at least, and you may want to ask your own advisers, it is relatively clear that that bylaw was invalid anyway when it was passed because it would amount to an improper delegation of council's authority and responsibility to the electorate, something that it cannot do under the Municipal Act. It would not be valid anyway.

Regarding the constitutional issues, in my submission, there are no real issues as to section 15. I am sure you can ask your own advisers about that. Regarding the comments concerning the difficulty over property, I would only have to note that I did not say that the reason for abolishing the parks board was the difficulty over the title to the land. What I said was that one of the

objectives to be carried out in the bill, as drafted, is to deal with that problem.

My friend can use the words "ludicrous," "laughable" and so on. I guess that is his opinion. All I can say is that I and other solicitors who had to investigate the problem, and who would be responsible to the city if we gave incorrect advice as to how that land should be held, were not quite so positive as he was.

On the last point, there is something underlying here and I suppose it is almost inevitable that it is going to come to somebody's mind. Mr. Bonn has said: "Well, let it go to a vote. Let the electorate decide. That is only November, so why do we not let the electorate decide and in effect postpone dealing with the bill?"

I may as well address that directly because, whether it has been said or not, I suspect it has been thought.

In my submission, that comes right to the heart of what is wrong and what is objectionable with Mr. Bonn's whole submission. Council as an elected body, which is presumed to be and is expected to be responsive to and representative of the interests of its constituency, has come to you and said, "On our responsibility we are asking you to enact this private bill." Mr. Bonn is coming to you and saying, "My people, who are interested in the parks board, a number of individuals, various people within the community, do not want you to do what council is asking and are telling you that council is not representative and that there are no good reasons and so on."

In my submission, it really would be an affront to the function of council as representative of the municipality to say, "I know that is what you say, but let's hear what the voters say." I would ask you to listen to what council is asking you to do. That is what they are there for and not to defer it to some plebiscite function.

Having said that, if you do determine nevertheless to defer it, I would certainly ask that procedurally it be done in such a way that after the election council can come back to you and request again that the bill be passed without having to repeat the entire and—as was mentioned at some point earlier this morning—very expensive process of getting the bill here. Obviously, we confidently expect, election or not and whether or not this matter is an issue, that I will be instructed to come back here, but again I do not want—and I am sure you can appreciate this as counsel—my having raised that point to detract from my earlier position. In my submission, you should not defer it. With respect, you should act on council's request and accept it as representative of council's constituency. Thank you.

Mr. Chairman: Thank you very much. I believe Mr. Sola has a motion.

Mr. Sola: I thought Mrs. Grier wanted to ask a question first.

Mrs. Grier: No. I will have to listen to the motion. I have a number of questions on clause by clause and I will save them till then.

Mr. Chairman: OK. Mr. Sola moves that Bill Pr40 be tabled to a future date. Are we agreed?

Motion agreed to.



Mr. Chairman: Thank you very much. Now, for the purposes of the applicant and those who have attended, what that means is that the consideration of this bill has not been completed, that the committee will have the option of considering the bill on a future date not yet determined. The committee will determine when it chooses to do that. I cannot tell you when that will be.

I can indicate to you that on such occasion that it is reconsidered, both the applicant and Mr. Bonn will get notice from the clerk of the committee and people are free to come back at that time or not. That is completely up to them. You should not assume that if you come back, you will automatically have a right to make another presentation to the committee, although that is a matter the committee could choose to deal with. I suppose that it is more likely the committee will do it if there was strong indication that there was somehow new information. Obviously the parties that have come before us are not in agreement and the committee always welcomes any opportunity that the parties might have to get together and come to an agreement.

I would very much like to thank the applicants and Mr. Bonn. You all made very detailed and effective submissions. I would also like to thank all of you who attended. We appreciate very much your interest in the government's procedures. I would also like to thank all the committee members, you did very well to hang in.

The committee adjourned at 1:16 p.m.

242-11  
10.15  
-574

T-23

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

GOTTSCHER RELIEF ASSOCIATION ACT  
COUNTY OF SIMCOE ACT  
PETERBOROUGH CIVIC HOSPITAL ACT  
MORAVIAN TEMPLE CORPORATION ACT  
CITY OF NORTH YORK ACT

WEDNESDAY, JUNE 22, 1988



STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

CHAIRMAN: Fleet, David (High Park-Swansea L)

VICE-CHAIRMAN: Beer, Charles (York North L)

Cleary, John C. (Cornwall L)

Fawcett, Joan M. (Northumberland L)

McCague, George R. (Simcoe West PC)

Pollock, Jim (Hastings-Peterborough PC)

Pouliot, Gilles (Lake Nipigon NDP)

Ruprecht, Tony (Parkdale L)

Smith, David W. (Lambton L)

Sola, John (Mississauga East L)

Swart, Mel (Welland-Thorold NDP)

Substitutions:

Epp, Herbert A. (Waterloo North L) for Mrs. Fawcett

Keyes, Kenneth A. (Kingston and The Islands L) for Mr. Cleary

Also taking part:

Adams, Peter (Peterborough L)

Black, Kenneth H. (Muskoka-Georgian Bay L)

Polsinelli, Claudio (Yorkview L)

Reycraft, Douglas R. (Middlesex L)

Clerk: Manikel, Tannis

Staff:

Klein, Susan, Legislative Counsel

Mifsud, Lucinda, Legislative Counsel

Witnesses:

From the Ministry of Municipal Affairs:

Neumann, David E., Parliamentary Assistant to the Minister of Municipal  
Affairs (Brantford L)

Gray, Linda, Adviser, Legislation, Policy, Local Government Organization Branch

From the Ministry of Consumer and Commercial Relations:

Barrows, Joe C., Senior Solicitor, Companies Branch

From the Gottscheer Relief Association:

Masters, Randolph J., Legal Counsel; with Masters, Weinstein

Lackner, Norbert, President

From the County of Simcoe:

Pelletier, A. F., County Clerk

Bell, Eldon, Chairman, Executive Committee, Simcoe County Council

From the Peterborough Civic Hospital:

Taylor, Richard J., City Solicitor, City of Peterborough

From the Moravian Temple Corp.:

Thompson, Colleen

From the City of North York:

Onley, Charles E., City Solicitor

From the Concerned Citizens for Civic Affairs in North York Inc.:

Williams, Colin J.

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Wednesday, June 22, 1988

The committee met at 10:20 a.m. in committee room 1.

GOTTSCHER RELIEF ASSOCIATION ACT

Consideration of Bill Pr50, An Act to revive the Gottscheer Relief Association.

Mr. Chairman: I see a quorum. Our first matter is Bill Pr50, An Act to revive the Gottscheer Relief Association. Mr. McCague is the sponsor. Mr. McCague, you have two people in front of us and perhaps you could introduce them to the committee.

Mr. McCague: To my right is Randy Masters who is the solicitor, and Norbert Lackner who is president of the Gottscheer Relief Association. Bill Pr50 is an act to revive the association. It is a social club with property holdings in my riding of Simcoe West. Gottscheer is a city in Yugoslavia from which many came to Canada and Ontario and purchased this property. Through inadvertence, they did not file under the Corporations Information Act in 1976. We are asking for your approval of the bill. Mr. Masters will tell you a little about it.

Mr. Masters: Just to repeat what was already said, it is a social club. Gottscheer is a city in Yugoslavia where most of the members came from. Originally, the club was to assist other friends or people who come from Gottscheer in buying homes and setting up in Toronto and Ontario. Subsequently, those people got established and it has become a social club.

The land in Barrie, or Adjala, I believe, is vacant right now. There is nothing built on it. Just through inadvertence, they forgot to make the filings as required, and they ask you to allow them to have their association revived.

Mr. Epp: I guess my question would be, what precautions or what actions have you taken to make sure this does not happen in the future? We do not want you back here two years from now asking us for the same thing to occur. This happens, I think, too frequently, where organizations just through sloppiness, I guess, let these things occur. I do not know why they do not read their mail.

Mr. Masters: We have sat down with Mr. Lackner and explained the procedures to him and what has caused the charter to be cancelled. He says that they are aware of the process now and, hopefully, they will not be before the committee again.

Mr. Epp: Is the solicitor going to continue to monitor the situation so this does not recur? Organizations tend to be fairly loosely run. There is a secretary, a treasurer and a president, and if somebody does not watch these things very closely these things are liable to occur again.

Mr. Masters: Yes. We are the solicitors and we are aware of it. We



are passing on the receipt from the government to the association now and we will just process it ourselves.

Mr. Epp: So you will be monitoring it on an annual basis.

Mr. Masters: Yes, to make sure the filings are made.

Mr. Chairman: Before I go to Mr. Ruprecht, I should have called on a representative of the government. I believe Mr. Haggerty has a comment with respect to this bill.

Mr. Haggerty: I have a memorandum from the Ministry of Consumer and Commercial Relations, Mr. Barrows, QC, senior solicitor, and the comments are: "Bill Pr50 will revive this corporation which has its letters patent cancelled for default. In complying with the Corporations Information Act, there is an error in the fifth line of the preamble to the bill where reference is made to an order dated the 13th day of January, 1979. The order was, in fact, made on the 17th day of July, 1979. Subject to the correction in the preamble and the corporation making an up-to-date filing under the Corporations Information Act, the companies branch has no objections to the passage of this bill."

There is an amendment for that.

Mr. Chairman: My understanding is that amendment is agreeable to the proponents.

Mr. Masters: Yes, Mr. Chairman.

Mr. Ruprecht: I want to thank my colleagues for agreeing to reinstate this organization called the Gottscheer Relief Association. I happen to know them very well and that is why I can assure this committee, speaking as a member of the committee, that there have been in the past a number of oversights but they have now been corrected, so we can be at rest when it comes to their future operations.

Mr. Lackner, who has been their chairperson for a number of years, as a good Canadian has steered the association in a way that to me is very worth while. I know the association provides relief and help to its own members and to those who are still in their country of origin, but in addition to that I want to assure this committee that the Gottscheer Relief Association consists of members who are all good Canadians, who are for a strong central government, and who have first-class citizenship at stake. That, of course, means that to keep the country together they have been together with us. When the Quebec nonconfidence motion came up, I was very delighted to receive their support at that time to ensure that this country called Canada stays together.

Having said that, as a member of this committee, I wish to congratulate the association and thank each member of this committee, because this organization not only deserves to be on the map, but also in the future will continue the struggle so that we have one strong Canada.

Sections 1, 2 and 3:

Mr. Chairman: Perhaps then, subject to any questions by other members of the committee—there not being any, perhaps, Mr. Ruprecht, you could move that we carry sections 1, 2 and 3 of the bill.

Mr. Ruprecht: I would be delighted. I so move.

Sections 1 to 3, inclusive, agreed to.

Mr. Chairman: There is an amendment with respect to the preamble.

Mr. Ruprecht moves that the bill be amended by striking out "13th day of January," in the fifth line and inserting in lieu thereof, "17th day of July."

Motion agreed to.

Preamble, as amended, agreed to.

Title agreed to.

Bill, as amended, ordered to be reported.

#### COUNTY OF SIMCOE ACT

Consideration of Bill Pr41, An Act respecting the County of Simcoe.

Mr. Chairman: The next matter on the agenda is Bill Pr41, An Act respecting the County of Simcoe. Mr. Black is the sponsor.

Interjection.

Mr. Chairman: We had already had some word you were agreeable to letting us go, but I would not want you to go away without thinking you are invited to have a seat.

Mr. Reville: I have a chair in my own office actually.

Mr. Black: I am pleased to introduce two members, one of the administration of Simcoe county and one an elected member. On my immediate right is Eldon Bell who is chairman of the executive committee of Simcoe county council. Eldon is also a former warden of Simcoe county. To his right is Al Pelletier who is the clerk of Simcoe county. Mr. Bell will be speaking to you.

Mr. Bell: It is a privilege for us to be here to represent our county this morning. I do not want to take much of your time to present our brief to you. There is some information in the folder we have passed around.

Quickly, the purpose of this private legislation is to control the size of our numbers on the county council because of the size of our county. We have now 43 members who have 65 votes. We have 33 municipalities, 8 villages, 7 towns and 18 townships. We border on the area of Simcoe and Lake Simcoe. We have the cities of Barrie and Orillia in our county.

1030

We feel that if we continue to let our legislation be as it is, we will have too many members in our chambers, and one way to curtail the number of people coming would be the number of electoral voters before they can come to the county, namely, the reeves and the deputy reeves. By giving the reeves this number of people to come to, then, in turn, we will be asking the reeves



to provide more votes, but it will leave the same municipality with the same number of votes it would have if it had a reeve and a deputy reeve there.

That is our concern, that we leave each municipality with the same number of votes has had over the past number of years. This would bring up the number of voters to be 9,750 people. The reeve would have three votes, and then the people with less than that would have one vote. We feel this is a very important feature for us and we would appreciate your looking into this and giving us your approval for this change.

Mr. Chairman: Before I ask for a comment from the government and subject you to other questions, I just want to be clear in my mind what you anticipate will be the size of the council as a result of this proposal.

Mr. Bell: Just 48 people. We have gone through our council and there are no objections to it. Different municipalities are doing this proposal.

Mr. Chairman: The net result of this thing is that if this goes through, you anticipate you will be going from 43 to 48.

Mr. Bell: I am sorry. No. We would stay with 43, what we have now, or thereabouts; maybe 44. If it does not go through, it could go as high as 48.

Mr. Chairman: If you do not get the bill, you think you are going to go to 48, and you are hoping that with the bill you will stay at 43 or possibly 44, subject to the final enumeration results.

Mr. Bell: That is right.

Mr. Chairman: OK, that is your understanding. That is fine. That is what I wanted to be sure I had. Perhaps now we can call on a representative of the government to comment. I presume it will be Mr. Neumann.

Mr. Neumann: We seem to have a little discrepancy on figures. Our estimate was 40 members with the change.

Mr. Bell: With the new bill, it could go down to 40, with the new settings.

Mr. Pelletier: Our estimates with regard to municipal electors were prepared about six months ago. With the advent of urbanization and development in our area, people moving in, it could go as high as 41, maybe 43, because we have been guessing, over the last six months, the number of municipal electors that have come into our municipalities. Until enumeration is completed in another month or so, we have to guess. It is a guesstimate and that is all it is.

Mr. Chairman: I understand.

Mr. Neumann: Barring population changes, it would be 40. The ministry's position on this is supportive. We have received no objections that we are aware of. The county has been co-operative in working with the ministry in terms of working through this bill. We recognize the motivation the county has in bringing this forward at this time. We would, however, point out that there are ongoing reviews of county government in general. Having said that, we see no reason to hold up Simcoe county's request for a change for this election. It could be that with more general changes across Ontario, it will

be a structure that exists for only one term, but it is still worth doing to help them through the situation they face.

Mr. McCague: This bill is similar to at least one other that has been approved by this committee. Is it more than one?

Mr. Pelletier: This will be the third one. The first was in 1971, the second was in 1979, and now in 1988, we require improvement again.

Mr. McCague: Like Mr. Bell, I had the privilege of serving as warden of Simcoe county. At the time I was warden, as I recall, the number of county councillors was 55, which in fact was the fourth largest governing body in Canada.

Mr. Epp: Almost the population of the county.

Mr. McCague: We were bigger than Prince Edward Island, and probably rightly so. However, this bill deserves approval. County council is desirous of limiting the size and I think it is important to note that, through all the circulation and consideration of this bill, there have been no objections filed. When the appropriate moment comes, I would be pleased to make the necessary motions to have this bill reported to the House.

Mr. Neumann: I would point out that there are two friendly amendments to be considered as you go through it clause-by-clause.

Mr. Chairman: I understand there are amendments proposed for sections 2 and 4. Is that agreeable to the proponents?

Mr. Pelletier: Absolutely, yes.

Mr. Chairman: Are there any other questions by members of the committee?

Section 1 agreed to.

Section 2:

Mr. Chairman: Mr. Epp moves that section 2 of the bill be amended by adding thereto the following subsection:

"(2) The council may by bylaw provide that a member who in council has one or two additional votes by virtue of subsection (1), shall as a member of any committee have the same number of additional vote or votes."

Motion agreed to.

Section 2, as amended, agreed to.

Section 3 agreed to.

Section 4:

Mr. Chairman: Mr. Epp moves that section 4 of the bill be amended by adding thereto the following subsection:

"(2) Despite subsection (1), the regular election to be held in 1988 under the Municipal Elections Act shall be conducted as if this act were in force."



Motion agreed to.

Section 4, as amended, agreed to.

Title agreed to.

Preamble agreed to.

Bill, as amended, ordered to be reported,

Mr. Chairman: Thank you, and good luck with the election.

Mr. Bell: Thank you, Mr. Chairman, I appreciate your efforts this morning, and also the minister for his support of this change.

Mr. Black: Mr. Chairman, I would like to thank the committee for their great wisdom.

Mr. Keyes: And for the time of the committee.

#### PETERBOROUGH CIVIC HOSPITAL ACT

Consideration of Bill Pr47, An Act respecting The Peterborough Civic Hospital.

Mr. Chairman: The next matter we have is Pr47, An Act respecting the Peterborough Civic Hospital. Mr. Adams is the sponsor.

Mr. Adams: I would like to introduce a high-powered team from Peterborough in the name of Richard Taylor, the city solicitor. It is a pleasure for me to be present this morning. I imagine this committee has had to deal before with the stages of evolution of municipal institutions, such as hospitals. In this case we have a municipal hospital which has grown in size and complexity over many decades, and as it has grown, it has had to cope with its new responsibilities. It seems to me that this act allows an appropriate increase in the freedom of action of the hospital and ties to that an appropriate increase in the responsibilities, which hospitals must accept.

It is my understanding that the county of Peterborough is formally in support of this change, as well, of course, as the city of Peterborough.

Mr. Taylor: Thank you, Mr. Chairman, and members of the committee. I actually appear on behalf of three applicants, the city of Peterborough was one, the county of Peterborough was another and the board of governors of Peterborough Civic Hospital is also an applicant in regard to this legislation.

Mr. Ruprecht: I was looking around, and I thought that in Peterborough you have the team of one, is that it?

1040

Mr. Taylor: We have gone a long way in achieving co-operation between the various levels of government.

Perhaps a historical portrait would be beneficial to the committee. This hospital is a community hospital as indicated by Mr. Adams. It was created by special legislation in 1945. The legislation that is before you proposes to amend that legislation by expanding the powers of the board of governors.

It purports to do so in three respects. First is to grant them the authority to enter into contracts for the expansion or enlargement or renovation of the hospital. At present, under the existing legislation, the city of Peterborough is the owner of the bricks and mortar and the property. That will not change with this particular legislation. However, we would like to see the board of governors be given the additional authority to let contracts in terms of expansion to the hospital. There is, in fact, a major expansion proposed for this facility.

The second aspect: There is a provision in the bill that would grant the board of governors the authority to grant leases, grant easements and otherwise deal with the realty in terms of supporting that expansion project.

The third aspect of the bill ultimately suggests that since they are assuming more responsibility, that in fact they should also assume the liability for their actions.

That summarizes the basic fundamental objectives of the legislation. To date, we do not believe that any objections have been filed with the bill and I would like to extend thanks certainly to the clerk's office and to the legislative counsel's office and the Ministry of Municipal Affairs for their kind comments in terms of the legislation and their assistance in bringing the matter before this committee.

Mr. Neumann: The Ministry of Municipal Affairs has no concerns and is supportive of this request. I would read a quote from the Minister of Health (Mrs. Caplan) as follows: "My staff has reviewed the bill and it poses no concerns for the Ministry of Health. You may be assured of my support."

Mr. Chairman: Good. Are there any questions by members of the committee? There not being any perhaps I could have a motion to carry sections 1, 2, 3, 4, the preamble, the title and the bill.

Sections 1 to 4, inclusive, agreed to.

Title agreed to.

Preamble agreed to.

Bill ordered to be reported.

Mr. Adams: Mr. Chairman, thank you and the committee. For your personal interest, Mr. Taylor is to be married I believe this weekend.

Mr. Chairman: Our congratulations.

The next matter that we have is Pr44, An Act to revive Moravian Temple Corporation. Mr. Reycraft is the sponsor.

#### MORAVIAN TEMPLE CORPORATION ACT

Consideration of Bill Pr44, An Act to revive Moravian Temple Corporation.

Mr. Reycraft: I want to introduce Colleen Thompson who is here with me representing the Moravian Temple Corp. This is a bill similar to one that you had before you earlier this morning. In fact, it was the first on your agenda. The letters patent, whatever, for the Moravian Temple Corp. were withdrawn by the Ministry of Consumer and Commercial Relations in 1982 and the



Moravian Temple Lodge wishes to revive the corporation and this bill would allow them to do that.

Mr. Haggerty: I have a few comments from the Ministry of Consumer and Commercial Relations dealing with Bill Pr44, the Moravian Temple Corporation Act, 1988. The purpose of the bill is to revive the Moravian Temple Corp. which had its letters patent cancelled on September 8, 1982 for failure to file returns under the Corporations Information Act.

The preamble of this bill contains an error in that the words "certificate of incorporation" in the sixth line should be replaced by the words "letters patent." Subject to the foregoing corrections being made and the corporation making a current filing under the Corporations Information Act, the companies branch has no objection to the passage of this bill.

Mr. Chairman: I understand that the proponents of this bill are agreeable to an amendment to the preamble.

Mr. Reyecraft: That is correct.

Mr. Chairman: Are there any questions by any other members of the committee? I have a question—

Mr. Epp: I have an amendment.

Mr. Chairman: OK. Before we deal with the amendment, I have a question concerning what the organization does. I am not concerned about the detail other than to know whether the general nature is a social organization or a charitable or educational organization.

Mr. Reyecraft: My understanding is that the corporation allows the Moravian Lodge, a Masonic lodge, to own and hold property, which I understand is in the village of Tiverton in Bruce county. The member for Bruce (Mr. Elston) of course, is not able to introduce a private bill and I am doing so this morning on his behalf.

Mr. Chairman: I appreciate that but I am trying to ascertain the status of the organization. Is it a charitable organization? It has some ramification in terms of the potential costs of the procedure you are now going through. This committee routinely will exempt some of the costs for charities.

Mr. Reyecraft: I do not think it would be accurately described as a charitable organization, certainly not in terms of the income tax. Not being a Mason, I am sorry I cannot comment. Understanding the secrecy that surrounds the organization, you will understand why I cannot comment in great detail.

Mr. Chairman: It is almost like government, is it not?

Mr. Reyecraft: There may be others here who can.

Mr. Chairman: Mr. Epp, you have an amendment to move?

Mr. Epp: I have an amendment to the preamble.

Mr. Chairman: Mr. Epp moves that the bill be amended by striking out "certificate of incorporation" in the sixth line and inserting in lieu thereof "letters patent."

Motion agreed to.

Sections 1 to 3, inclusive, agreed to.

Title agreed to.

Preamble, as amended, agreed to.

Bill, as amended, ordered to be reported.

Mr. Chairman: The next matter that we have before us is Pr58, An Act respecting the city of North York. Mr. Polsinelli is the sponsor.

#### CITY OF NORTH YORK ACT

Consideration of Bill Pr58, An Act respecting the City of North York.

Mr. Polsinelli: I would like to introduce Charles Onley who is the city solicitor for the city of North York. He would be pleased to respond to any questions that you may have with respect to this private legislation dealing with the incorporation of a nonprofit organization for the North York Performing Arts Centre.

Mr. Onley: It may be of assistance to members if I just very briefly review the history of this. This property is immediately south of North York City Hall. It was owned by the province and was bought in 1975 for the purpose of a courthouse.

Shortly thereafter, the Metro official plan was amended to set up subcentres, one of which is in the Sheppard-Yonge area close to this. Since that time, there have been several million square feet of development there, including condominiums. When it is completed, it is expected to be something in the order of 60,000 employees. In the late 1970s, as this development started to charge ahead, in fairness, it was the idea of Mayor Lastman that we should have a place other than just one where people work and reside.

1050

An extensive study was done and a review to see whether it would warrant having a performing arts centre in North York. Part of this was as a result, as you may recall, of the opera people looking for a new location. That did not come to North York, as you may know.

Notwithstanding that, however, as in any large-sized place like North York with a population close to 600,000, there already are many art forces at work. There is the North York Symphony, the Leah Posluns Theatre, and recently, the Centre for Advanced Film Studies on property that was given by E. P. Taylor to North York. It offers a sort of post-graduate course in being a director for the movies. That was sponsored to a large extent by Norman Jewison, and that opened recently.

By the way, I got an invitation to go to it, and I thought, gee, that is very nice of Mr. Jewison to invite us to it. His parents and my wife's parents went to the same church so I assumed it was because of that. However, we got there and we were two of about 3,000 people who appeared at the place. So, some 3,000 of his close friends were in attendance.

That brings us up to around 1980-81. There was a decision made then that



we should really go by private legislation for a performing arts centre rather than having it done by a committee of council.

You will note in the bill that it specifies that there are to be a mayor and three members of council, and it sets out specifically that some of the other 11 members of the board are to be from the business community and from the arts community.

We have carefully crafted the statute with, I should say here, the great assistance of the members of your staff. They are always helpful, but they were very helpful here because this went through several changes before it came to be presented.

We think it is going to work very well. We did not put in the description of the property, even though we have received the deed for two-and-a-half acres from the province, which was received about 1985, because the site may change very slightly as the development occurs. As you may know, most, if not all of it, is going to be the Ontario Hydro head office.

This is within a very short walking distance of a stop on the subway. It is a few minutes from Highway 401. It is a major centre. We are very proud of it. The performing arts centre, I think, is going to add to the breadth of the operation of the municipality for its residents.

If there are any questions, I will certainly be glad to answer them. Pardon my voice, I have a cold.

Mr. Epp: I have a question.

Mr. Chairman: Before we get to that, I would like to hear from the government as to what opinions they have.

Mr. Neumann: The city of North York has been most co-operative in working through this bill, and a number of changes have been incorporated into the draft of the proposed bill which is before the committee.

I would like to indicate the pleasure of being here and welcoming Mr. Onley. He is certainly a familiar figure in municipal affairs across Ontario. I have seen him at many conferences of the Association of Municipalities of Ontario.

The bill is an interesting one which balances off the interest of the city in maintaining the city's interests in the ongoing work of this corporation, and yet at the same time providing a certain degree of responsibility for the new corporation.

There were a number of issues which have all been resolved, I am pleased to report. One is related to the tax exemption and it has been put on hold pending further developments. They may be back to us at a later date on that one.

The other one is with respect to a matter related to the Ministry of Environment and the relationship with the Environmental Assessment Act, and that has been resolved with an appropriate amendment which has been incorporated into the bill.

I am pleased to report that we have no objection to the bill as it is presently drafted.

Mr. Chairman: Before I go any further, there is a gentleman in the back of the room. I am not sure if he is here in respect to this matter.

Mr. Williams: I am.

Mr. Chairman: Are you in opposition or in its support?

Mr. Williams: I am in opposition to one very small aspect of the bill.

Mr. Chairman: After the proponents have had an opportunity to answer any questions that members of the committee may have, I will give you an opportunity to address the committee with whatever your views are. OK?

Mr. Haggerty: Bill Pr58, the City of North York Act, 1988. The companies branch has reviewed Bill Pr58 and has no objections from the point of view of the legislation administered by the companies branch.

Mr. Fleet: Thank you very much, Mr. Haggerty. I think at this point I will go to Mr. Epp, but I should also alert members of the committee that I want to make sure everybody has the documentation that I have. Also, this is something that the proponents may want to deal with. There are letters of opposition that have come from the Willowdale Central Ratepayers' Association; Manhattan Place, which would appear to be Metropolitan Toronto Condominium Corp. 595; a Mr. Hatch; and the North York Centre Core Ratepayers' Association. I want to make sure that all members of the committee have brought all four of those items.

Mr. Polsinelli: We are aware of two of those letters.

Mr. Chairman: All right. The Hatch letter everybody has, and what is the other one everyone has?

Mr. Keyes: The only one is the Manhattan Place. You have—I see Willowdale Central Ratepayers' Association.

Mr. Chairman: You have three of them.

Mr. Keyes: I have three.

Mr. Chairman: I am not sure. Is there anybody here who is missing one or more of the four letters?

Mr. Keyes: I am missing one.

Mr. Chairman: Which one are you missing?

Mr. Keyes: I have Manhattan Place, Hatch and Willowdale Central Ratepayers' Association.

Mr. Chairman: The North York Centre Core Ratepayers' Association is missing.

Mr. Neumann: We have not seen the ratepayer objections.

Mr. Chairman: The government has not seen any of the ratepayer objections?



Mrs. Gray: We were informed of the environmental assessment objection, but we have not seen the others.

Mr. Chairman: The clerk is going to return momentarily and I guess I will then have her make some photocopies.

Mr. Sola: This is dated June 21.

Mr. Chairman: This is material that has been received this week. In fact, one of them is dated as having been received June 22. Another one is a memo to all members of the committee from the clerk. This is the North York Centre Core Ratepayers' Association. I presume it is sitting in interoffice mail.

Perhaps it would just be wiser to have a recess for a few minutes.

Mr. Polsinelli: Well, Mr. Chairman, I am informed that—

Mr. Chairman: I want to get copies prepared for members of the committee. I think we are obliged to put them in their hands. We will recess just long enough to make some copies.

The committee recessed at 10:58 a.m.

1108

Mr. Chairman: Let's commence. We have got a copy of the North York Centre Core Ratepayers' Association letter provided to all the members of the committee. I believe the proponents have had an opportunity to familiarize themselves with what is in the letters. Just so everyone is also aware, Colin Williams is the gentleman at the back whom I referred to earlier in the proceedings. He is here representing the Concerned Citizens for Civic Affairs in North York Inc., and that is a separate group from each of the four letters we have received. I believe Mr. Epp had a question.

Mr. Epp: No, I did not have a question; I just had a comment. I am very pleased to see Mr. Onley before the committee. He has had a very distinguished career, as you know, with the city of North York, being the solicitor for the Association of Municipalities of Ontario for a good number of years, and we are very honoured to have him here. He has been here a number of times before committees, and we are very honoured to have him here. I want to welcome him.

Mr. Onley: Thank you very much. I am honoured to be here.

Mr. Chairman: Thank you. Are there any questions by any other member of the committee?

Mr. McCague: As I recall, Mr. Onley was also with the mayors and reeves, which these young fellows here would not recognize.

Mr. Onley: Before their time.

Mr. Chairman: I am sure you do not really want the chair to make any observations in this regard.

Mr. McCague: Go right ahead, if you like. I cannot add anything further unless you chirp in.

Mr. Chairman: Are there any further questions or comments by members of the committee?

I have a question. I would like to have the proponents address each of the letters at least briefly so that we have on the record what each—

Mr. Polsinelli: Rather than have Mr. Onley address each of the letters, it seems that the thrust of the objections that are contained in the letters deals with the exemption under the Environmental Assessment Act, and maybe Mr. Onley can deal with that particular objection generally. I think that, having done so, he probably will have dealt with the general objections in the four pieces of correspondence that we received.

Mr. Onley: On the matter of the Environmental Assessment Act, there is not much question that this project would be exempt in any event, because under clause 5(2)(a) of the regulations, the estimated cost of the project—Remember, this is a building; this is not a sewage disposal plant, a road or settling beds or anything like that. Buildings generally are not subject to environmental assessment. That is partly, I guess, the reason the estimated cost, in order to get to the \$3.5-million floor for it to apply, does not include the cost of the land, nor does it include the cost of a building that is constructed under the Building Code Act. That really is what we are doing. We have land and are putting up a building.

There was some question at an earlier stage in developing this bill as to whether or not the Environmental Assessment Act would apply in the event the property was turned over to the performing arts corporation. It has been determined since then that it is going to remain in the name of the city, and as you will have noted, I am sure, in going through the bill, the city has a very substantial control, particularly budgetary control. Furthermore, as I indicated earlier, there are the mayor and three members of council who will be sitting on the board of directors.

Mr. Chairman: Is the version of the bill—and I presume section 24 in particular—different from the version of the bill or the information about the bill that the objectors would have had at the time they raised their objections?

Mr. Onley: I do not think so. No, I do not think that section has changed. It may have changed some. Maybe Linda could assist you.

Mrs. Gray: In the original application there was a straight exemption from the Environmental Assessment Act. At the request of the Ministry of the Environment, the bill was altered in its draft form to include subsection 2, which says that if the Lieutenant Governor in Council feels that an environmental assessment review is required, he may do so.

So those changes were made. I am not sure whether the people who reviewed the bill were aware of those changes or whether they had seen it in first draft. Those changes were made, and Scott Gray can comment on the Ministry of the Environment's letter, if required.

Mr. Onley: That is my understanding, yes. But as far as any printed document is concerned, it was always in this one.

Mr. Chairman: OK. Are there any other questions arising from that from other members of the committee?



There not being any, perhaps you can just stay where you are, but Mr. Williams would like to come forward and he can make his presentation. Following your presentation, in the same manner as I have been proceeding all morning, I will ask members of the committee if they have any questions for you.

Mr. Williams: Our comments apply specifically to section 24 of the bill. It is our view that this section is not necessary, as the minister could, after appropriate inquiry, exempt any undertaking from application of the environmental assessment.

We feel it establishes an unfortunate precedent. We do not know enough about the proposed development to know whether an assessment is in fact necessary or not, but there is an established procedure, and we can see no merit in turning that established procedure upside down for this particular case.

We favour any arrangement that opens up the development process to public understanding and scrutiny. The existing planning process does not always achieve this.

It seems to us that section 24 is tactically a clever move. It has the flavour of an end run. Let's just look back at the history in this immediate neighbourhood. About 150 metres north of the site that we are talking about, there was a proposal to breach the 45-degree plane rule. This is a scheme to prevent apartment or office towers very close to residential dwellings. This scheme was put forward by the city. It was overturned by the Ontario Municipal Board and subsequently reinstated by the cabinet. So an end run had been done to achieve the objective here.

There was a proposal that has subsequently come to pass to build a Toronto Transit Commission station at Park Home. It was recommended by the advisory committee of the Minister of the Environment (Mr. Bradley) that this be subject to an environmental assessment inquiry. The minister decided otherwise and, subsequently, the Ombudsman was critical of this decision, although because of the degree that this had gone ahead in the mean time, he did not recommend reversal.

There is currently before the OMB an official plan amendment 277, where they have made a partial decision and suspended for at least three months certain important aspects of the plan for rethinking by the city of North York. Here the municipal board criticized the quality of the traffic information that was presented to the board.

In the Marathon development which is perhaps 300 metres south of this project—and this is a personal opinion—they appear to be relying on a rather poor quality traffic impact assessment.

About 150 metres to the northeast of this site is the Menkes development. This project has some expert reports associated with it dealing with traffic, dealing with wind and dealing with snow accumulation.

We are told that these reports can be viewed, but copies cannot be taken away to be studied by the citizens. In our view, the citizens cannot provide adequate scrutiny unless they have the documents available.

Coming to the bill itself, I learned of this yesterday afternoon. I did not see the bill until a little after 10 this morning. I tried in two of the

public libraries in North York to obtain a copy of the bill and it was not available. So, with those comments, I must admit I am not fully understanding of all the cross-references that are given in section 24.

Mr. Chairman: Are there questions by any member of the committee?

Not seeing any questions, I have a question then for Mr. Onley. It says on the second page of the compendium that the city does not know of anybody who is opposed to the bill.

Mr. Onley: Unfortunately, Mr. Chairman, at the time that was made, we thought the two objectors, which I think were Hatch and Manhattan Place, were satisfied as a result of discussions the representatives had.

If you recall, the Manhattan project is a general objection to development. The fact of the matter is that the performing arts centre will be at the north end of this 10 acres. In any event, the whole 10 acres is now designated for enhanced coverage. I have some sympathy for an apartment dweller who thought he had as of right an open-space view across this whole site which, by the way, is now a parking lot, but I do not see that it is relevant to the operation of the performing arts centre.

1120

As far as the other objective is concerned, you will note that is a well-intentioned objective, but it is just generally, "Don't spend money on this; spend it on low-cost housing," which certainly has merit, and maybe we have to do both.

Mr. Chairman: Mr. Keyes.

Mr. Keyes: Yes, I have one to Mr. Onley. I thought you were just asking for questions of Mr. Williams.

Since your act is relating to the establishment of a performing arts corporation, why was it really felt necessary to put in the exclusion of the Environmental Assessment Act, since your own comment has been that any building built by such a group would not be subject to the Environmental Assessment Act. I do not quite understand why you put it there in the first place.

Mr. Onley: That is a good question. The reason it was put in was that at one stage it was thought we would turn the whole thing over to the corporation. It is now almost certain that will not be done. It will be handled just like any other local board, like an historical board or any other boards that are established, where the municipality has control over ownership of property and certainly has control, as this bill provides, over the operating budgets of the project, including a maximum of value of contracts the corporation can enter into.

However, if the property had been transferred over—and I think someone said before we tread a fairly straight path, narrow though it may be, to cover the possibility of it being transferred over to the performing arts corporation—even if were, it is 99 per cent sure that the estimated cost of the project, which is one of the bases that I indicated, does not include the cost of the land or the cost of the buildings; so we may be chasing our tails on this. Since I am in charge of the dog pounds, I can speak of that advisedly. None the less, we have to be careful and prudent, since this is going to be operating for many, many years, to have that in there.



Mr. Keyes: Is there any comment from Mr. Neumann on that particular aspect or staff members?

Mr. Chairman: Or staff from the Ministry of the Environment.

Mr. Neumann: As we indicated, the Ministry of the Environment staff are not here, but they are supportive of the bill, as worded, because it does leave the option of requiring an environmental assessment hearing through the Lieutenant Governor in Council, should that be necessary.

Mr. McCague: Mr. Neumann has given an explanation, but maybe Mr. Onley would like to comment on the environmental remarks made by Mr. Williams.

Mr. Onley: As I said to Mr. Williams during the recess, this is a building we are going to put up. We would not be putting this in any bill if it were a garbage dump or a sewage disposal plant—that is when you are talking about environment—or a major road or something like that. Buildings just normally are not subject to it, as the regulations provide, and are not to be included in the estimated cost.

However, as Mrs. Gray pointed out, there is a notching provision that, under clause 40(f) of the Environmental Assessment Act the minister can require there be an environmental assessment if required. I am afraid having this clause in, which was done in all good faith, as I mentioned, has raised a bit of a bogymen that does not exist. If you were putting in an addition to this building or building a new one, you would not have an environmental assessment.

The environment is concerned with what you do to the environment. The building does not do that.

Mr. McCague: In other words, Mr. Onley, you are satisfied that the opportunity to go to the Lieutenant Governor in Council is, in fact, Mr. Williams's opportunity to put the pressure on the government at some time in the future if the residents think they are being unfairly dealt with or have a grievance?

1120

Mr. Onley: Yes. Certainly, that option is left. I am hesitating because I am just not sure what the situation to build is. You are putting up the building.

Mr. McCague: True, but you can understand Mr. Williams's point too. He wants an opportunity to have a say at some future time. As I understand it, that opportunity is there, at least to point out to the government that what is being done should be subject to an environmental assessment, and at that point, the government can decide. I think he does have another kick out of it, if that was his wish.

Mr. Epp: I will move the bill.

Mr. Chairman: All right. That would be sections 1 through 26, inclusive, the preamble, the title and the bill? Agreed? All members are shaking their heads; I take it in a positive way. So that is agreed to.

Sections 1 to 26, inclusive, agreed to.

Title agreed to.

Preamble agreed to.

Bill ordered to be reported.

Mr. Chairman: Thank you. I would also like to thank Mr. Williams for his helpful input.

There are two matters I want to draw to the attention of the committee. The first one is the matter of the agenda for next week. You will see that a draft agenda has been circulated. Only I have it, I understand. Two matters are listed. the first is Pr72, which is an act to revive a corporation. It is a private corporation and it presumably is going to be quite straightforward.

The second matter is An Act to revive Lebon Gold Mines Limited. This is the matter which was before the committee in May and which led to the proponent having been turned down by the committee to write a letter back to the committee requesting, in essence, a reconsideration. That matter was heard by this committee and this committee decided to ask the Legislature to formally redesignate our committee with jurisdiction to look at the matter. The Legislature, I understand, passed the resolution, doing just that earlier this week.

In addition to the fairly lengthy submission provided by the solicitor for the proponent, this committee directed the clerk to provide a copy of that correspondence. That is a letter from Mr. Algie dated May 26, 1988, and to send that letter out to the solicitor for the opponent. That was done, and I have since received a letter dated June 20, 1988, from Mr. Wengle; who is the solicitor who appeared in May. That letter goes on for some 17 pages, and there are a couple of other documents he has included.

The option that remains before this committee is whether or not we wish to have not only the correspondence before this committee next week but also whether we wish to have the proponents come back and the opponent as well and give them an opportunity to make an additional oral submission. My sense of it, since I do not think anybody other than the clerk has seen the last letter, is that Mr. Wengle's letter is exhaustive.

What I suggest the committee may want to do is simply to take both written documents plus a copy of the transcript from Hansard, and I think we can make that all available for next week as well as having Cindy provide us with a legal opinion to the committee about where we stand, and then simply make a decision on that basis.

Mr. Ruprecht: Without their coming.

Mr. Chairman: Without their coming.

Mr. Ruprecht: I agree with that.

Mr. Chairman: It is open to this committee if you want to do otherwise.

Mr. McCague: We talked about this matter of appearance before the committee when you took over chairmanship, I think, or when we got into four or five bills one day that took one minute apiece. I think there is a motion on the book somewhere suggesting that if the chairman in his wisdom feels an



item does not require the attendance of people, then we can with it in their absence. I think I am correct in that.

This situation is a little unfortunate in that I think the committee made a decision originally based on something that was outside its scope. I am one who would strongly advocate, as Tony has suggested, that we try to deal with it next week. As a matter of fact, if it were not for a careful reading of the 17 pages, which I know we all will do before next Wednesday, and you feel we must do, I would be suggesting you deal with it today. However, you will feel more comfortable doing it another day, I presume.

Mr. Chairman: I understand this matter has been put in Orders and Notices for the House for the committee for next Wednesday. Also, I think it might help Cindy if she has a little more time to completely prepare it, and I can get copies of the documentation in front of everybody. That was my only reason for thinking of next week as opposed to today. Given the history of this thing, I would like us to proceed procedurally correct and precisely so.

Mr. McCague: I can understand how you would want to proceed in a strictly legal manner.

Mr. Chairman: I will take that as a compliment.

Mr. Epp: Being a little less legalistic about this, but trying to be practical, Mr. Keyes and I are pinch-hitting on behalf of other members of the committee, which would leave only a very small group to determine what you are going to do on this. From our standpoint—and I think I can speak on behalf of both of us—I would prefer if you left it to some of the more permanent members of this committee to determine.

Mr. Chairman: OK.

Mr. Sola: The problem was that the last time this came up we had a lot of pinch-hitters and I think that was the reason we got sidetracked.

Mr. Keyes: So you felt the calibre was better today.

Mr. Sola: More experienced.

Mr. McCague: I would be quite happy to deal with it today, even though Mr. Epp and Mr. Keyes might not want to.

Mr. Chairman: That being said, we will proceed as I indicated and it will come up next week. That seems to have been agreed by everyone.

The committee continued in camera at 11:33 a.m.

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STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

LEBON GOLD MINES LIMITED ACT  
329931 ONTARIO LIMITED ACT

WEDNESDAY, JUNE 29, 1988



STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

CHAIRMAN: Fleet, David (High Park-Swansea L)

VICE-CHAIRMAN: Beer, Charles (York North L)

Cleary, John C. (Cornwall L)

Fawcett, Joan M. (Northumberland L)

McCague, George R. (Simcoe West PC)

Pollock, Jim (Hastings-Peterborough PC)

Pouliot, Gilles (Lake Nipigon NDP)

Ruprecht, Tony (Parkdale L)

Smith, David W. (Lambton L)

Sola, John (Mississauga East L)

Swart, Mel (Welland-Thorold NDP)

Substitutions:

Miller, Gordon I. (Norfolk L) for Mr. Cleary

South, Larry (Frontenac-Addington L) for Mrs. Fawcett

Also taking part:

Black, Kenneth H. (Muskoka-Georgian Bay L)

Clerk: Manikel, Tannis

Staff:

Mifsud, Lucinda, Legislative Counsel

Witnesses:

From 329931 Ontario Ltd.:

Murrell, Robert

From the Ministry of Consumer and Commercial Relations:

Straus, Earle H., Legal Counsel, Companies Branch

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Wednesday, June 29, 1988

The committee met at 10:09 a.m. in committee room 1.

LEBON GOLD MINES LIMITED ACT  
(continued)

Consideration of Bill Pr49, An Act to revive Lebon Gold Mines Limited.

Mr. Chairman: I am going to deal first with Bill Pr49, An Act to revive Lebon Gold Mines Limited.

This is a matter that has been before the committee before and I will not reiterate all of the materials that have been provided to the committee or all of the procedures other than to say that I understand all members of the committee will have a copy of the transcript from Hansard from Wednesday, May 4, 1988, when this matter was first considered by the committee; subsequent correspondence from the solicitors for the applicants dated May 26, 1988; a response by the solicitor for the objector dated June 20, 1988, and most recently a brief that has been received from the solicitors for the proponent. I do not think it bears a date on it.

In any event, there is also a memorandum from our legislative counsel dated June 27, 1988. I think that between those documents we have covered the field of all the possible arguments and rationales. I understand Mr. McCague would like to comment.

Mr. McCague: Mr. Chairman, as you outlined, we did consider this matter before and really what happened was that the committee got into consideration of matters that were not truly within the jurisdiction of this committee and you, Mr. Chairman, correctly asked legislative counsel for an opinion—I guess you could call it an opinion—or recommendations or a precis of what we heard and what it is that this committee does.

We have a very thorough and, in my opinion, excellent opinion or report on that from our legislative counsel. I guess the operative paragraph is 10, where it says: "Lastly, the committee has always been mindful of fairness. For the reasons indicated I am of the opinion that no unfairness would result from the revival of this corporation. However I do think that if the committee wishes to approve the application that it consider amending the preamble to reflect the fact that the ownership of the assets is not clear. The preamble is part of the bill and should contain a statement of the facts. As the facts are in dispute it would seem prudent to change the wording in the manner set out in the attached motion. If this is done it cannot be argued that the committee has in passing the bill accepted the claim of the applicants."

Being the only one of the committee members here today who was here for the original consideration of this matter, including yourself—we are happy that you took time off and got married; you seem a lot more agreeable since—I have a motion, if you would think it is in order, to put at this time.

Mr. Chairman: Before you put the motion, I might add for the record that I entirely concur with the comment you made. I think the memorandum which



is for all intents and purposes an excellent legal opinion, speaks to the real issues in this matter exactly and in point 7 it states, and I quote: "There appears to be little doubt that both parties are seeking their own interests. This does not indicate 'bad faith' by either party and any representation to the contrary is misguided."

The first part of point 8 says: "The revival of the corporation is not in itself 'prejudicial'. It is true that the losing party in the court claim is detrimentally affected but the outcome is a legal one based on the merits of the case and not on the corporate status."

I think anybody who is to have any view of this matter agrees that those sorts of merit issues ought to be dealt with by the courts and also should be mindful of the fact that Hansard on page T5 from the first hearing of this matter puts in a rather material consideration that when the decision was made on May 4, it seems to have been lost. Legislative counsel had asked if there were any additional assets beyond the one that is the subject of the lawsuit.

The answer from Mr. Algie was: "To my knowledge, several mining claims and that is it. That is the land and the assets on the land." He was asked again whether if the opponent's property were not involved, there would still be other assets. Mr. Algie replied, "I believe so." That would suggest that there are assets in existence that the corporation has a claim to other than the subject of the lawsuit.

Mr. McCague moves that the preamble to the bill be amended by striking out:

"but was the owner of certain patented mining claims which included a mill, buildings and underground installations and it is desirable to revive the corporation so that it may deal with these assets; that the applicants have paid all taxes accruing against the property of the corporation for more than 30 years;"

in the 21st, 22nd, 23rd, 24th, 25th and 26 lines and inserting in lieu thereof,

"but that it is desirable to revive the corporation so that it is able to pursue interests it may have in certain patented mining claims;"

Mr. Miller: This has been sanctioned through the Ministry of Consumer and Commercial Relations? Just how has it developed, as an alternate member of the committee this morning?

Mr. Chairman: The commentary was provided by the government representative on May 4. I believe that indicates the government had no objection. In fact, on page T2 of the Hansard transcript for the committee meeting of May 4, 1988, Mr. Haggerty indicates, "Accordingly, the Minister of Revenue has no objection to the application of the above corporation as petitioned in the private bill to be considered by the private bills committee."

He also indicated that all taxes estimated to be payable under the corporation's tax act by the corporation had been paid.

Are there any further questions? We have had moved an amendment to the preamble.

Motion agreed to.

Preamble, as amended, agreed to.

Sections 1 to 3, inclusive, agreed to.

Title agreed to.

Bill, as amended, ordered to be reported.

### 329931 ONTARIO LIMITED ACT

Consideration of Bill Pr72, An Act to revive 329931 Ontario Limited.

Mr. Chairman: The next matter is Bill Pr72, An Act to revive 329931 Ontario Limited. Mr. Ken Black is the sponsor. I believe he is here with Robert Murrell. Perhaps you could approach the committee.

Mr. Black: It is a pleasure to see that all of the committee members are full of the milk of human kindness this morning and in a good mood.

Mr. Chairman: As usual.

Mr. Black: As usual. Far be it for me to suggest otherwise.

I am pleased to introduce Robert Murrell. Rob is from the Port Severn-Waubaushe area and is one of my constituents. He has a private bill here to revive a numbered company in his name and I would ask him to speak to that. Rob, go ahead.

Mr. Murrell: My business had been going on for 14 years and I was not aware that the accountant I had been doing business with had not been in contact with my lawyer until I received a bill from Revenue Canada looking into what they thought I owed them and what we thought we owed them. We ended up with a new accountant at that time. That is when we found out that our company number was really not ours any longer. So the assets of 329931 had all of a sudden become the assets of the government of Ontario. That is what started this bill.

Mr. Chairman: Thank you. I understand that we have a representative of the government here. Mr. Straus, perhaps you could just come up and take any seat you like and indicate on the record what the position of the government is.

Mr. Straus: My name is Earle Straus. I am a lawyer with the companies branch, Ministry of Consumer and Commercial Relations. We have no objection to revival of the corporation, save two qualifications. One is that according to a recent search of the public file, no notice of change indicating the current directors, officers and registered office of the corporation has been filed. Second, the preamble does not indicate the purpose of the revival.

Mr. Chairman: Has this been discussed with Mr. Murrell?

Mr. Murrell: Yes, it has.



Mr. Chairman: Mr. Murrell, are you prepared to undertake to do all the required filings of current directors and any similar documentation?

Mr. Murrell: Yes, I am. I have it right here.

Mr. Chairman: Second, has there been any discussion with you of the proposed amendment to the preamble? If not, I have one you can read before we proceed. Our usual practice is to make sure you are aware of what it is you about to amend on your bill.

Mr. Murrell: Do I make this motion?

Mr. Chairman: No, one of the committee members will have to make the motion.

Clerk of the Committee: I will just read it. We are discussing it so the members are aware of it. "Moved that the preamble to the bill be amended by inserting after 'dissolution' in the 12th and 13th lines 'that ongoing business activities have been carried on in the name of the corporation since the date of dissolution.'"

In my reading of private bills, I understand this is quite normal to be in there. I think it was just been missed.

Mr. Murrell: I understand this and I agree with it.

Mr. Chairman: Mr. McCague moves that the preamble to the bill be amended by inserting after "dissolution" in the 12th and 13th lines "that ongoing business activities have been carried on in the name of the corporation since the date of dissolution."

Motion agreed to.

Mr. Chairman: Before I proceed, are there any further questions by any member of the committee?

Sections 1 to 3, inclusive, agreed to.

Preamble, as amended, agreed to.

Title agreed to.

Bill ordered to be reported.

Mr. Chairman: Wonderful. Thank you very much. Go back and make lots of money, Mr. Murrell. Thank you also, Mr. Straus.

#### ORGANIZATION

Mr. Chairman: The next matter on the agenda is the issue of our legal counsel. Specifically, we have a supplementary budget.

Mr. McCague: Could I ask a question please?

Mr. Chairman: By all means.

Mr. McCague: To what extent do you propose to talk about legal counsel today?

Mr. Chairman: Not much. I will if you want, but you are asking what I propose to do.

Mr. McCague: None? Are you saying none?

Mr. Chairman: Well, other than the budget.

Mr. McCague: OK. Then I would be pleased to move, I guess, that the budget as presented be forwarded to the Board of Internal Economy.

Clerk of the Committee: I will give you the motion in just a second.

Mr. McCague: Oh, OK.

Mr. Chairman: Mr. McCague moves that the supplementary budget in the amount of \$4,353 be approved and that the chairman be authorized to present the budget to the Board of Internal Economy.

Are there any questions?

Mr. Miller: I see the budget has been reduced by \$36,000.

Clerk of the Committee: That happened at the board meeting.

Mr. Miller: I see.

Mr. Chairman: The board, in its wisdom, saw fit.

Mr. Miller: Is the committee doing any travelling?

Mr. Chairman: We should be so lucky.

Mr. Miller: I was just checking.

Mr. Chairman: No, this committee does not get farther than committee room 1 or 2.

Mr. Miller: I guess, Mr. Chairman, there is no reason why we should not accept this, is there?

Mr. Chairman: None that I am aware of.

Motion agreed to.

Mr. Miller: No further questions.

Mr. Chairman: I think that concludes everything for today. I would like to thank all of the participants for their participation.

Interjection: Have a good summer, Mr. Chairman.

Mr. Chairman: Thank you very much. You too.

The committee adjourned at 10:26 a.m.





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T-25

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

ORGANIZATION

CITY OF TORONTO ACT

PETERBOROUGH HISTORICAL SOCIETY ACT

ROCKTON WINTER CLUB INC. ACT

288093 ONTARIO LIMITED ACT

ARIANN DEVELOPMENTS INC. ACT

WEDNESDAY, NOVEMBER 2, 1988





STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

CHAIRMAN: Furlong, Allan W. (Durham Centre L)

VICE-CHAIRMAN: Lipsett, Ron (Grey L)

Keyes, Kenneth A. (Kingston and The Islands L)

McCague, George R. (Simcoe West PC)

Miclash, Frank (Kenora L)

Pollock, Jim (Hastings-Peterborough PC)

Reville, David (Riverdale NDP)

Smith, David W. (Lambton L)

Sola, John (Mississauga East L)

Stoner, Norah (Durham West L)

Also taking part:

Adams, Peter (Peterborough L)

Carrothers, Douglas A. (Oakville South L)

Haggerty, Ray: Parliamentary Assistant to the Minister of Consumer and  
Commercial Relations (Niagara South L)

LeBourdais, Linda (Etobicoke West L)

Nixon, J. Bradford (York Mills L)

Polsinelli, Claudio: Parliamentary Assistant to the Minister of Municipal  
Affairs (Yorkview L)

Ruprecht, Tony: Parliamentary Assistant to the Minister of Community and  
Social Services (Parkdale L)

Clerk: Manikel, Tannis

Staff:

Klein, Susan, Legislative Counsel

Mifsud, Lucinda, Legislative Counsel

Witnesses:

From the City of Toronto:

Foran, Patricia, Deputy City Solicitor

From the Peterborough Historical Society:

Pammett, Maureen, President

Aspinall, Bob, Past President and Chairman, Management Committee

From 288093 Ontario Limited:

Stein, Frederick, Solicitor

From Ariann Developments Inc.:

Blott, Allan, Solicitor

From 235 Grandravine Inc.:

Apergy, Peter, Treasurer

From the Ministry of Consumer and Commercial Relations:

Levine, Katherine, Solicitor, Companies Branch

From 235 Grandravine Drive:

Iwanow, Don, Tenant

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Wednesday, November 2, 1988

The committee met at 10:09 a.m. in committee room 1.

ORGANIZATION

Clerk of the Committee: Can I have your attention, please. As Mr. Fleet is no longer a member of this committee, we are going to have to elect a new chairman. We will also have to elect a new vice-chairman, as Mr. Beer is no longer a member of the committee. I call on nominations for chairman.

Mrs. Stoner: I would like nominate Al Furlong for chairman.

Mr. Sola: Second the motion.

Clerk of the Committee: Mr. Furlong has been nominated. Are there any further nominations? Seeing none, all those in favour? Opposed? Seeing no one opposed, Mr. Furlong, would you please take the chair.

Mr. Chairman: Thank you very much. The second order of business would be to nominate a vice-chairman. Could I have someone nominate?

Mrs. Stoner: I would like to nominate Ron Lipsett.

Mr. Chairman: Ron Lipsett has been nominated. Are there any other nominations? Seeing none, I declare nominations closed. Mr. Lipsett is vice-chairman.

CITY OF TORONTO ACT

Consideration of Bill Pr17, An Act respecting the City of Toronto.

Mr. Chairman: The first order of business is Bill Pr17, An Act respecting the City of Toronto. Could the applicant, Patricia Foran, deputy city solicitor, please come forward. Would you identify yourself, please, for the purposes of electronic Hansard.

Ms. Foran: My name is Patricia Foran, and I am the deputy city solicitor for the city of Toronto, the applicant in respect to Bill Pr17.

Mr. Chairman: I understand you are going to be requesting that the bill be withdrawn. Is that correct?

Ms. Foran: Yes, I am instructed by the council to inform the committee that council wishes to withdraw the bill and for the necessary action be taken here so that it not be reported.

Mr. Chairman: Do you wish to make any further comment?

Ms. Foran: I am here to answer questions, if there are any questions.

Mr. Chairman: Are there any questions?



Mr. Reville: The bill was withdrawn, I take it, because of the advice received from the Minister of Labour (Mr. Sorbara). Is that what the council's decision was based on?

Ms. Foran: Yes. The Minister of Labour, on June 21, wrote to the council and expressed the opinion that the ministry would be unable to support the city proceeding with the legislation at this time. As you know, Bill Pr17 was drafted long before the amendments to the Occupational Health and Safety Act. When the amendments came forward, the council had some trouble with some of the provisions. Some of the council's concerns were resolved. Some were not.

The city has had involvement in the preparation of the regulations. There are still some concerns, but the council's view was that it would try to work with the legislation and see if it met its concerns, and if not, I guess we would be back with requested amendments. I think it was in the spirit of co-operation that we were consulted on the regulations.

Mr. Reville: This is in relation to the legislation on the workplace hazardous materials information system that was before the House yesterday.

Ms. Foran: Yes.

Mr. Reville: You probably know that we dealt with Bill 180 yesterday. The city of Toronto had a sort of broader-reaching idea in mind, I think, originally.

Ms. Foran: A different approach.

Mr. Reville: Thank you, Ms. Foran. I have no further questions.

Mr. Chairman: Are there any other questions? I guess the procedure is to have the committee vote on whether the bill should be reported. All those in favour of the bill being reported? None. All those opposed? The motion is defeated.

#### PETERBOROUGH HISTORICAL SOCIETY ACT

Consideration of Bill Pr53, An Act respecting the Peterborough Historical Society.

Mr. Chairman: The second item on the agenda is Bill Pr53, An Act respecting the Peterborough Historical Society, sponsored by Mr. Adams.

Mr. Adams: If I might introduce to you two distinguished citizens of Peterborough, on my immediate right is Maureen Pammett, who is the current president of the Peterborough Historical Society, and on her right is Bob Aspinall, who is the past president of that society and is at the moment chair of the management committee of the society. Mr. Chairman, can I begin?

Mr. Chairman: Certainly, Mr. Adams.

Mr. Adams: Thank you. If I might say something very briefly about Hutchison House, which is the focus of this bill, the intent, as you know, is that it be relieved of municipal taxes. Hutchison House is interesting because it was a community-owned property in the 1830s. It was a property developed, a built by the city of Peterborough for its first medical doctor, so in a sense

the community is supporting with some assistance a property it once owned and once acquired for very specific community purposes.

My two colleagues can tell you much more about Dr. Hutchison, but so that you will have some sense of what the house means in Peterborough, the Hutchisons were related to the family to which Sir Sandford Fleming belonged. The community college in Peterborough is named after Sir Sandford Fleming. Among other things, he invented standard time and things of that sort. So this family has a tremendous history in Peterborough and these historians here can tell you about it.

I am extremely pleased to be able to sponsor this bill, among other things not only because I am interested in history, but because Peterborough needs downtown attractions to stimulate its downtown core and local economy, and Hutchison House, through scores of volunteers, is actually doing that. People come from far afield to visit this house and therefore stimulate the local economy.

I wonder if I could turn first to Maureen Pammett. Would you be the first.

Mrs. Pammett: I am very pleased to be able to say a word about Hutchison House, because we are very proud of it in Peterborough. It is a living museum; that is, it is restored to the period of the 1840s. The downstairs is all 1840s and every item of furniture and equipment in that area is authenticated as coming from that period. The upstairs is from the 1860s. We have guides who wear the costume of the time. There is always somebody cooking over the open hearth to demonstrate the way in which people actually lived at that time. We are very proud of this.

We feel it is really unique because it is owned by the Peterborough Historical Society. This is why we are asking for relief of taxes. As you know, it is difficult these days to keep such an operation going; it is an expensive proposition. Most of our revenue comes from the work of volunteers. We are asking you today to help us with that.

I would like to give you a brochure about Hutchison House—if you are ever in Peterborough, we hope you will come and see it—and also a brochure that details the educational program carried on in the house. These brochures are sent to all the schools in the area. Workshops, tours and craft programs are carried on in the house for the children so that they will know what it was like to live in Peterborough in the 1840s and 1860s.

Mr. Aspinall: I would like to speak about the financial situation of Hutchison House to show you that we are a very hardworking, energetic group that does not rely on handouts. We have 70 very active volunteers who donate thousands of hours during the year. As Mrs. Pammett mentioned, we feel we are a unique museum in that, as far as I can see, we are the only such museum whose building and artefacts are owned by a historical society. We are very proud of that.

Our total revenue for the year 1987 was about \$73,400, and of that revenue approximately \$22,300 was received from municipal and provincial grants. City taxes, one of our expenses, were \$2,800. You can see that a small fraction, less than a third of our revenue has been from grants. As Mrs. Pammett mentioned, we do have difficulty making ends meet. We look forward to having this relief from taxation.



1020

Mr. Chairman: Before we get on to questions, Mr. Polsinelli, do you have any comments you would like to make?

Mr. Polsinelli: The Ministry of Revenue has sent a letter of objection to this proposal, suggesting that no further private legislation of this kind be dealt with until the interim ministry review of the issue is complete. However, I would point out to the committee that they have had this objection since 1977 and the committee on other occasions has basically considered each application on its merits.

The Ministry of Education has no objection to this proposal. The municipal finance branch commented that it would be objecting until such time as evidence could be obtained that the municipal council has endorsed the application and that the school board has been notified. I understand those items are now in place, so accordingly, we have no further comments to make.

Mr. Reville: I have a comment to make. I will support this legislation, but having dealt with this kind of matter frequently as a member of Toronto city council, it is my view that it is much more appropriate to give grants towards the operations than to forgive taxes, because that is then seen in a very visible way and becomes a priority of the municipality. I prefer that approach, but you are taking an approach that is normally taken. I will support it.

Mrs. Stoner: I would speak in favour of the resolution and would in fact move approval of it, but in doing so, would comment on Mr. Reville's proposition of a grant. Unfortunately, grants are sometimes looked at by councils on an annual basis and are not necessarily always in place and are in question. Therefore, the historical society is not sure that those dollars are going to be there, whereas with this resolution, the society will be assured that those expenses will not be incurred.

Mr. McCague: Do I understand, Mr. Chairman, that you have in your possession letters, as suggested by the parliamentary assistant, confirming that the city of Peterborough and the Ministry of Education are in favour of this?

Mr. Chairman: Yes, I have it now.

Are there any further questions?

Sections 1 to 3, inclusive, agreed to.

Preamble agreed to.

Schedule agreed to.

Title agreed to.

Mr. Chairman: Mr. Lipsett moves that the committee recommend that the fees, less the actual cost of printing, be remitted on Bill Pr53, an Act respecting the Peterborough Historical Society.

Motion agreed to.

Bill ordered to be reported.

ROCKTON WINTER CLUB INC. ACT

Consideration of Bill Pr 42, An Act to revive Rockton Winter Club Inc.

Mr. Chairman: The next order of business is Bill Pr 42, An Act to revive the Rockton Winter Club Inc. I understand Mr. Carrothers is substituting for Mr. Elliot. Come forward Mr. Carrothers.

Mr. Carrothers: I believe this bill is pretty straightforward. As its title indicates, it is An Act to revive Rockton Winter Club Inc. Through inadvertence, I guess, on the part of the volunteer staff of that organization, the corporate existence was cancelled because of the ownership of property and so on. The best way to straighten things out is to revive the company. That is what this bill is intended to do.

Sections 1 through 3, inclusive, agreed to.

Preamble agreed to.

Title agreed to.

Bill ordered to be reported.

288093 ONTARIO LIMITED ACT

Consideration of Bill Pr55, An Act to revive 288093 Ontario Limited.

Mr. Chairman: The next item of business is Bill Pr55, An Act to revive 288093 Ontario Ltd. The sponsor is Mrs. LeBourdais.

Mrs. LeBourdais: The applicants are not here today, but their solicitor, Mr. Stein, is here and I will ask him to address the matter, please.

Mr. Stein: I think I can repeat basically what the gentleman before me said. This company lost its charter through inadvertence. It is a company that is a trustee company, holding for about 20 or 30 individuals, and something got lost in the shuffle a few years ago. It is pretty straightforward and I am here to answer any questions if you have any.

Mr. Reville: Could you tell me, please, what the business of 288093 Ontario Ltd. has been.

Mr. Stein: It is a trustee company holding a piece of property in the Caledon area for a group of people, about 20 or 25 individuals. That is its only function.

Mr. Reville: Thank you.

Mr. Chairman: Perhaps before we get to further questions, Mr. Haggerty is here from the Ministry of Consumer and Commercial Relations.

Mr. Haggerty: I believe the committee has a letter from the Ministry of Revenue in regard to private bill 288093 Ontario Limited Act, which says, "I have now been advised by the above corporations tax branch that the above corporation has complied with all its requirements. This ministry, therefore, no longer has any objection to the revival of this corporation."



I might say that the Ministry of Consumer and Commercial Relations too has no objections to the revival of this corporation, except that I have a question to ask, which is, has form 1 of the Corporations Act been filed with the ministry?

Mr. Stein: Somebody gave me that form today. I am prepared to undertake that this form will be filed in due course.

Mr. Haggerty: Are the directors the same then—

Mr. Stein: The directors are the same.

Mr. Haggerty: —as listed in the bill?

Mr. Stein: Yes, they are.

Mr. Haggerty: But you will file.

Mr. Stein: I will file that, yes. I undertake to do that.

Mr. Haggerty: Thank you.

Mr. Ruprecht: Mr. Chairman, you indicated that something got lost in the shuffle. I would be interested to know how this could get lost in the shuffle.

Mr. Stein: As I said, there is a group of about 20 or 25 people who are involved in this company or who are involved in this piece of land. This is a company that holds this land in trust for this group of people. As you probably know, to have 25 people on title to a property is very unwieldy. They took the route of having the company incorporated to hold this land in trust for this group of people. Unfortunately, certain filings were not made three or four years ago. Because it is a big group of people and unwieldy, when it came to making a certain payment, which was a very nominal amount, they could not get this group of people together to make the payment and inadvertently the charter lapsed.

Mr. Ruprecht: It is not a question here that the notice got sent to the wrong people or anything of that nature?

Mr. Stein: No, I think it is the fact that the notice got sent, but there were so many people involved that probably the right hand did not know what the left hand was doing, so that through inadvertence this charter did get cancelled.

Mr. Keyes: I guess this is a follow-up question to that and really would apply to much of what it looks like the business of this committee is. As a newcomer, I am not totally familiar, but as I read through it, it appears that much of the work seems to be the revival of corporations that through inadvertence or misunderstanding suddenly have their charters cancelled.

My question would be, in general, what steps are taken by the new corporation to ensure that the same situation does not occur all over again in four or five years from now? It becomes time-consuming to government officials and committees like this, as well as of minimal cost to the applicants. I was

wondering what steps are going to be taken so that this does not recur in a short time.

Mr. Stein: With this particular company, I suppose that with what it is costing them and the importance of having this charter revived, since this land is very, very valuable, there certainly will not be any mistake again because they have to protect its own interests. I think it has been put to them in quite a definite manner that if this happens again, they are going to lose their land. Economically, I think they know that they have to keep this charter alive.

Mr. Keyes: I do not think you have answered the question, but—

Mr. Chairman: In fairness, I do not think the witness is in a position to answer. Perhaps it is something we could be looking at to make recommendations.

Mr. Keyes: I thought he was the solicitor for the firm, that is all, and that perhaps would be part of the responsibility of the solicitor-client relationship.

Mr. Chairman: In fairness, having been involved with companies that have inadvertently forgotten things before, I can tell you that by the time they pay their solicitor's fees and other things, they are penalized for their mistakes.

Sections 1 to 3, inclusive, agreed to.

Preamble agreed to.

Title agreed to.

Bill ordered to be reported.

Mr. Chairman: Can we call a five-minute recess, please.

The committee recessed at 10:34 a.m.

1051

Mr. Chairman: The next bill for consideration is Bill Pr66, An Act to revive Ariann Developments Inc. The sponsor is Mr. Nixon. He was here a moment ago. Mr. Nixon, could you come forward, please?

#### ARIANN DEVELOPMENTS INC. ACT

Consideration of Bill Pr66, An Act to revive Ariann Developments Inc.

Mr. J. B. Nixon: I was approached some time ago by a constituent who is involved with a company known as Ariann Developments which had not filed a notice under the Corporations Information Act and was wound up by the minister. As she is a constituent, I agreed to bring forward this bill, which is An Act to revive Ariann Developments Inc. My understanding is that the Ministry of Consumer and Commercial Relations has no objection.

Mr. Chairman: Do you have anyone wishing to make a submission at this time?



Mr. J. B. Nixon: I understand the company is represented by counsel. I understand there are tenants who wish to make submissions. I leave it in the committee's hands.

Mr. Chairman: Perhaps counsel could identify themselves for purposes of the record.

Mr. Blott: My name is Allan Blott and I have with me Susan Rosenthal.

Mr. Chairman: Do you wish to make any further submissions, Mr. Blott, at this time?

Mr. Blott: Yes, I think it is incumbent upon me to state some of the background, some of the considerations that have gone into this application, especially in view of the fact that there is a contrary position which is going to be put forward to you. I would respectfully request the opportunity to respond to that position, so as not to take the committee's time at this point in answering the points the other people who have listed themselves to speak will make.

I want to mention at the outset that there is a principal shareholder of Ariann Developments Inc. Mala Logan is her name. Through inadvertence on her part, she had as the registered office for the company her residence at 3 Cartwheel Millway, North York. She moved from that residence some three years ago. It turns out that somebody called the ministry last December to advise that Ariann Developments Inc. had changed its address and the ministry then sent out a notice of change to that address. She never got it. To my knowledge, it never went to any of her solicitors. Consequently, after the 30 or 60 days had lapsed, the corporation charter was rescinded.

The ramifications that flow from that are immense. This is a company that is ongoing and active, right down to the car she drives on a day-to-day basis, which is owned by that company. Substantial bank loans with two chartered banks are in the name of that company.

Five different buildings throughout Metropolitan Toronto are in the name of that company. You have probably seen some representations in written form from some co-owners of two of those buildings. But there are three other buildings, two in Etobicoke and one in Mississauga, that are purely rental buildings. As far as those tenants are concerned, Ariann Developments Inc. is the landlord, does the management, does the collecting of rent and does the payment of the mortgage.

Let me say that in order to be here before you today, we had to advertise the difficulties Ariann finds itself in. Immediately thereafter, one of those chartered banks called Ariann's loan of some \$1.7 million. We have been able to forestall the collection of that loan, but it is a difficult, precarious situation that will have ramifications not only to Ariann, but to these other buildings in its portfolio. On a day-to-day basis, the other chartered bank could call its loans as well. I might add the first chartered bank also cancelled Ariann's bank account, because as far as that bank is concerned, Ariann does not exist. The second chartered bank could cancel the bank account. We have some 500 owners or tenants or in between who are immediately impacted by that.

The position of the major shareholder has been one of traumatic circumstances for these past six months now. That shareholder had very few options but to come before your committee. Under far more serious charges,

such as failure to pay corporation taxes, in the case of a company whose charter is rescinded, there is an automatic revival. For some reason, in a circumstance as minor as this, there is not an automatic revival. I have been given to understand that will be corrected in amending legislation within the forthcoming year, but again that is of no assistance to Ariann.

An alternative could have been to go through petition to the public trustee for the release of assets. That was a possible alternative. We considered that alternative, but that would have triggered severe tax repercussions. The Ministry of National Revenue treats such a transfer as a conveyance of fair market value, so that alternative was not available. It came down to this private member's bill as being the only viable alternative for this corporation and that is why we are here today.

It is essential that this consideration be given by this committee at the earliest possible time and that this reinstatement occur at the earliest possible time, for several reasons. May I just list a few of them? There is outstanding right now to this company some \$200,000 to \$300,000 in receivables that cannot be collected, because it does not technically in law exist. There is in the trust account of its real estate lawyer, Strauss, Cooper, \$100,000 that sits there and cannot be released. This company slides towards bankruptcy with every passing day for just the two reasons I have given you, as well as the brink that it is on as far as its lenders are concerned.

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Enforcement: There are tenants—the word has got around—who do not feel compelled to pay their rent, let alone those co-owners from 580 Christie Street and 235 Grandravine Drive who do not feel compelled to make their maintenance payments and their mortgage payments. The assets of this company are required to act on guarantees given by other related companies in its portfolio. That is unavailable right now.

As an instance, this company has a building on Airport Road in Mississauga. The mortgage came due in August 1988. It was stymied and there was no way to deal with it; alternative favourable mortgages could not be sought. It is a substantial building of approximately 100 units. Again, it had to be renewed at a 14.5 per cent mortgage because there was just no alternative available—either stay with the existing lender or there was no alternative.

These are the financial ramifications of this inadvertence. It is a horror story, frankly, that just gets worse and worse with each passing day.

I ask for the committee's indulgence to provide the assistance that is required to put this company back in good standing. You are going to hear some submissions from interests on a basis that I suppose I would call self-interest, and I again respectfully request the opportunity to respond to those submissions.

Mr. Reville: There is a document before us entitled Compendium of Background Information. It seems to have been filed by Strauss, Cooper, which is not your firm. Are you aware of this document?

Mr. Blott: Yes, I am.



Mr. Reville: Has there been a change in representation for this applicant?

Mr. Blott: On this matter, yes. Strauss, Cooper continues to act on real estate matters as far as the co-ownership agreements are concerned. As I mentioned in my remarks, they have in their trust account some \$100,000 of closings in escrow.

Mr. Reville: The final sentence of that compendium dated September 20 is, "The applicant is not aware of any persons or groups who are opposed to the bill." That is not correct, is it?

Mr. Blott: That are not what?

Mr. Reville: It says, "The applicant is not aware of any persons or groups who are opposed to the bill." Perhaps that was the view of Strauss, Cooper, but that does not seem to be the case.

Mr. Blott: Certainly not as of the information you have filed as of today and as we have ascertained in the past week, but perhaps as of September 20, that was the case.

Mr. Chairman: Before further questions, perhaps we can hear from Mr. Haggerty from the Ministry of Consumer and Commercial Relations.

Mr. Haggerty: I have two letters here, one from the Ministry of the Attorney General concerning a letter from J. A. De Sommer, the public trustee, and it is addressed to: "Legislative Counsel, Ariann Developments, 962657-3, November 2, 1988." It says, "Thank you for your memorandum of the 27th last. I am pleased to advise you that we have completed our investigation of the above-noted defunct corporation, on the basis of which the public trustee will not object to Bill Pr66 being enacted to revive the above-noted corporation."

The other letter is from the Ministry of Revenue. It is a memorandum to the legislative counsel: "Subject: Proposed private bill, Ariann Developments Inc. Act, 1988.

"I have been advised by the corporations tax branch that the above corporation has complied with all its requirements. This ministry, therefore, has no objection to the revival of this corporation."

Signed, "T. M. Russell, Deputy Minister."

The Ministry of Consumer and Commercial Relations has no objections to it, but I am going to ask you one question. Have you filed the Corporations Information Act or do you intend to file it?

Mr. Blott: I believe it was filed on May 3, 1988.

Mr. Polsinelli: Unfortunately, I was not apprised of this issue until this morning. I must indicate that I am the former member of provincial parliament for this property.

Mr. Blott: For 580 Christie Street?

Mr. Polsinelli: No, for 235 Grandravine. It is the building, I believe, that the majority of the objectors are here from this morning. In reviewing some of the documentation I have in front of me, it seems that

Ariann Developments was not a particularly good landlord. In fact, they promised to deliver on certain items and they seem not to have fulfilled that promise. I would like your point of view on that and what Ariann Developments is prepared to do at this point if the company is revived by the Legislature.

Mr. Blott: Sir, what is the date of the document you are referring to?

Mr. Polsinelli: I have a warranty dated April 30, 1986. It says, "We, Ariann Developments Inc., and Mala Logan, the vendors of the above property, hereby warrant to the purchasers"—and it names the purchasers—"that one indoor parking space and one outdoor parking space are included in the purchase price, as stipulated in the agreement of purchase and sale executed March 11, 1986."

I have a document from the city of North York, a notice of violation, indicating that they are in default.

Mr. Blott: And the date of that, sir?

Mr. Polsinelli: The date of this is November 16, 1987, almost a year later, saying they are in default in providing the requisite number of visitor and regular parking spots.

I have another document. This is another undertaking signed by Mala Logan on behalf of Ariann Developments Inc. This is dated September 19, 1986. This is an undertaking saying, "The undersigned hereby undertakes to complete the following items at his own expense: to install new broadloom in the hallways and elevators; to change all plumbing to copper; to resurface the outdoor parking lot where necessary and to maintain same in good repair; that all mechanical systems will be in good working order; to complete installation of a new roof for the property," and this goes on and on.

Mr. Blott: It is a continuing thing. I think there is probably even reference in some document about the swimming pool that had to be filled and the tennis court that had to be—

Mr. Polsinelli: The sauna.

Mr. Blott: Exactly, and these things were done. If you go and look at the ground floor of that building, it was obviously redecorated within the last year.

Mr. Polsinelli: I have some other documents here. As I say, unfortunately I have not had the opportunity to really apprise myself of what they say. It seems to me that a number of meetings have been held by the co-owners of the building—this is again 235 Grandravine—with some of the local representatives, the local alderman, Peter LiPreti. There is a litany of things that have not been done. I can read them to you, I can provide copies for you if you like; but it seems that Ariann Developments has promised to do certain things, and on the face of the documents I have before me, it has failed to deliver on those promises. We have some of the co-owners here from the building who I am sure will be giving some evidence with respect to that.

I understand that the charter of Ariann Developments was revoked on a technical basis. They probably are within their rights to have it reinstated, but it seems to me they are placing themselves now before a public forum, and it is also appropriate at this time to determine whether or not the people who



are involved in these projects, particularly in the project at 235 Grandravine have a legitimate right to object to the charter being reinstated and have a legitimate right at this point to deal with someone other than Ariann Developments if they have not been dealing with them in good faith.

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Mr. Blott: May I respond to that? Firstly, two points. They have a right to deal with somebody else and they have the right to change the management of the building. That is entirely within their purview to do so. They have 50 per cent of the shares.

Secondly, not everybody feels the same way as the owners who have tendered that 1986 and 1987 documentation with you. I have some letters from some of the other owners in that building. Basically, the gist of the letter—some have added their personal comments—but the residents have signed a letter stating as follows: "Having been a co-owner in the building you manage at 235 Grandravine Drive for over one year, I have chosen to write you at this time, to express my opinion on the maintenance and management of 235 Grandravine Drive. In my opinion, the building is well maintained by Ariann Developments. The superintendents you have hired are hard working, efficient and accessible. The building is clean and repairs are done promptly and thoroughly. The grounds are well kept. They are attractive and neat. Facilities are maintained in good condition. Maintenance fees are reasonable. In short, I am pleased with the management of our building and am thoroughly satisfied with Ariann Developments and Mrs. Logan's property management." That is signed by the owner of 1405.

Mr. Polsinelli: I would hate to ask who prepared that document and who brought it to the co-owner to have it signed. Now, along with that, I—

Mr. Blott: May I just finish? I have not finished my response, sir. Thank you. The owner at unit 804 added the following comments: "I have been in this apartment about 25 years. When the opportunity arrived to purchase my unit I did it immediately, paying cash. I feel it was one of the best moves I ever made and enjoy the stability and security." That is signed by the person in 804. That is a personal comment to that previous form letter I wrote.

What I am saying is this. If in a building of some 190 apartments, you have some disgruntled owners, they have recourse in other forms. What I am saying to you, sir is Ariann Developments has no other recourse than this committee. If these people have a legitimate concern and they have a legitimate issue to take to court or some other form against this owner, I think they are entitled to do so.

Mr. Polsinelli: Mr. Blott, did you indicate that the owner of 804 has sent a letter supporting this reinstatement?

Mr. Blott: That is what I have here, sir.

Mr. Polsinelli: I also have a petition signed—

Mr. Blott: I am sorry, it's 580 Christie.

Mr. Polsinelli: Oh, 580 Christie.

Mr. Blott: 580 Christie.

Mr. Polsinelli: Well, let me then rephrase what I have to say, because I think if we go on with this, you can show me letters of people supporting this reinstatement and people who are happy, and I can show you petitions signed by tens of homeowners at 235 Grandravine who are against it, even the occupant of apartment 804 at 235 Grandravine, and we can go back and forth for a long time. I could also show you a letter indicating that they do not know who the present management company is and a list of concerns.

I have a very simple question. Given that you are in a public forum, and given that the co-owners and the tenants of 235 Grandravine and the other buildings have a legitimate right to appear before this committee, and apprise us of their concerns, my question to you, sir as the solicitor for Ariann Developments is, what is Ariann Developments prepared to do, given that they are in this public forum, given that some of the concerns have been brought forth? What are they prepared to do to reach some type of settlement with the co-owners at 235 Grandravine and the other buildings that they presently are involved in?

Mr. Blott: Well, I suppose the first thing they are prepared to do sir, is collect the \$140,523 that is owing by the tenants at Grandravine of which the apartment 804 owes some \$1,797. Now, the collection of that money will go a long way towards maintenance, payment of taxes and mortgages. It will go a long way. If we can just get the arrears paid by some of these people who are coming before this committee, and some of them owing in excess of \$5,000 and asking for this committee's indulgence—it will go a long way. If those people are able to convince their co-owners that Ariann Developments is an unsuitable manager and they have an election and change managers, Ariann Developments will be the first one to turn over the key.

But let's face reality here. There is a substantial amount of money owing and these people are not paying. That is the first item of business once this company is reinstated, to get the books back in order.

Mr. Polsinelli: I think when we talk about reality it all depends on what side you are sitting on. Quite frankly, I have not heard a satisfactory answer. I do not think it is the co-owner's fault that these things have not been done. I am not here to judge whose fault it is, but it definitely seems that there is a problem between Ariann Developments and the occupiers of those units with which Ariann Developments has entered into a contract and seems to not have fulfilled its part of the obligations.

What I am hearing from the solicitor representing Ariann Developments is not a co-operative tone, but rather one of saying: "Have the tenants pay. Have the co-owners pay and we'll take care of all the problems." That is not a way to solving problems.

Mr. Chairman: Are there any other questions?

Mr. Ruprecht: I have a question. Did you say that some of the tenants or some of the co-owners owe a substantial amount of money? You mentioned that some owe \$1,000 and some owe over \$5,000. My colleague, of course, has asked you really to see what your client would be prepared to do to maintain or fix up the premises. I am just wondering whether \$1,000 or \$5,000 is per unit, or are these only some of the people?

Mr. Blott: If I can put it this way, dealing with 235 Grandravine Drive, most of the monthly payments owed by the the co-owners, and we are dealing here with co-owners, are in the range of \$500 or \$600 per month to



cover maintenance, mortgage and taxes. There are some that are less than that and there are some that are more than that. There is a whole raft of people who owe in excess of \$2,000, close to \$3,000, which suggests that there has not been any payment made by them for five or six months during the time this charter has been revoked.

That is the point. Ariann has had to scramble from every source possible to make sure that the mortgages are kept in good order during this period when fellow co-owners do not live up to their obligations, let alone the tenants in the three other buildings that are totally unrelated to this co-ownership situation at Grandravine Drive or 580 Christie Street. That is the magnitude of the difficulties. At Grandravine alone, there is now owing some \$140,000 by the co-owners of that building. A similar amount, \$146,000, is owed by the co-owners of 580 Christie Street. It is my contention that the very important issue before you is to get this in.

I called the mortgage holder of 580 Christie Street myself; Don Kopas of Kopas and Burritt Financial Agents Ltd. The mortgage has expired but he said it has been maintained in good standing.

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There is no magic here, if it has been maintained in good standing throughout this period when some of these co-owners owe \$6,000, \$2,000, \$1,900, \$1,900, \$2,700. Some have paid, some have kept it right up to date too, I am not suggesting that everybody is delinquent; but I am saying there is a substantial number who are and who have not made a payment for five or six months.

It has fallen to Ariann and the major shareholder of Ariann to find the money to keep that mortgage in good standing through this very trying period, and she has done so. I confirmed that on Monday with Don Kopas.

Mr. Ruprecht: But your contention is that if this situation continues—

Mr. Blott: It is impossible.

Mr. Reyecraft: —then it is simply a question of time when bankruptcy would have to be declared. Am I understanding this correctly?

Mr. Blott: You are absolutely correct. With one bank gone now, one bank calling their loans and closing their bank account and the other bank still servicing the company but could very easily take the view that the company does not exist, that would be the end of it.

I want to make this one other point, that the public trustee is aware of all of this. The public trustee has been kept up to date. From the moment this company went into this situation, we have endeavoured to keep the public trustee aware of all the circumstances. So there is no great operation here in some illegal operation because a charter has been cancelled by technicality at the behest of a phone call by somebody. The public trustee has been kept aware. We have endeavoured to struggle through this trying period under these very trying circumstances.

Mr. Keyes: I just have to comment again—apologizing to Mr. Blott; it is my first day ever on a committee of this nature—that in reading terms of reference of the committee and the role I am supposed to fulfil, I felt

there is one aspect of it in that you live up to what are the kind of the legal definitions that are here, but I hope that in my life in politics, I have another moral side to what I do.

I have not heard yet, like my colleague across the way, what is going to happen with the company. Surely we have an obligation on us not merely to look at the fine technical aspects of the law as to whether a company reincorporates, surely we must look at whether or not we are going to be party to reincorporating a company that has good business ethics or not.

That really troubles me, because anything I have read of the documentation provided prior to today and today certainly suggests to me there is very little evidence of good business ethics on the part of Ariann Developments and its principals, whoever they may be, and we have the name of one person. Frankly, it must be very difficult for a solicitor to represent a company that obviously represents such bad business ethics.

I am still at the moment withholding my judgement on whether I will vote to do it. If we live strictly by the limited technicalities we have heard, that Consumer and Commercial Relations and Revenue both say there is no problem from the technical point of view reinstating it, we may be forced into doing it, but my conscience asks me, how can we reincorporate a company that seems to have no moral ethics or business ethics at all?

I leave you with that as something I want on the record, because I just cannot believe what I am hearing about a company and how it could be inadvertent—the normal terminology; inadvertency of losing a charter—a company that represents five major buildings in the housing industry in this province and this city inadvertently forget to file documents to remain solvent.

Again, it is just another example of what I consider the lack of business ethics on their part. Why should I be party to reinstating them?

Mr. Blott: Fine. You raise the ethical question. I would like to respond to it in two ways, but first, let me just put this ethical question to you. The notice of change of address is sent from the ministry to this address and the woman had not lived there for three or four years. The ethical question is: Who phoned the ministry to tell someone this woman had changed her address, and then why would the ministry send a notice to that address?

It is an easy question that has troubled me from day one. It is an easy one to slide over because we are, after all, dealing with other serious, real problems.

I can assure you that it was not the lady who phoned the ministry to say she had changed the address. It was not she who got herself into this, that way. Yes, perhaps solicitors along the way should have sent these forms into the ministry so they would not have been in that position. I agree with that. I am just dealing now with the very simple ethical question of who called the ministry. I do not know the answer. I agree with you that something has to be done here.

I spoke to the bank that has been negotiating with the people who have filed the stuff in terms of renegotiating their mortgages. The bank has a precedent for doing so. This is the National Bank of Canada. As of yesterday, it was put in a position where it could proceed with this financing. It is quite willing to do so. Fundamentally, it can only do so. I have a letter from



the manager of that bank just confirming our discussion today, that in order to do so it is imperative that this charter be reinstated.

In round numbers, what we are talking about is the people who bought these units for \$40,000 or \$50,000, which may have a market value of \$100,000. From this bank they will get \$70,000 which will be more than enough to cover off the existing first mortgage which has matured, Kopas and Burritt, and will be enough to cover off the second mortgage owed to Ariann Developments. For that matter, if it is valued at more than \$100,000, they will get more than \$70,000. It should be a reasonably good deal for these people. Fundamentally, there is no deal if the charter is not reinstated. I have the letter here. I would be happy to file it with you.

I am prepared to work with this bank and with these people to see if this can be achieved. I think that is an essential first step because we could talk about whether there is water in a swimming pool, a net on the tennis court or broadloom in the corridor. But fundamentally, if you do not have a mortgage, you have major problems with the very people who are going to be before you today.

I am saying that their satisfaction rests in confirming this mortgage, having the meeting, throwing Ariann Developments out, if they feel that the people who wrote this letter do not know what they are doing, and if they have a better idea of how the building should be managed. I do not know of any magic solution. I cannot commit to spend \$20,000, \$30,000 or \$40,000 on fixing something for the tenants. I cannot commit to that. The public trustee would not allow me to. We do not have the money or the charter to do so. I do not think that is the approach. I do not think that patching the problem is the answer.

I think that the mortgage and the meeting and the continuation or getting a new manager is the answer to their concerns. Another way may be to condominiumize the building, to set it up in another format that more reflects what the existing situation is. That may be another solution.

I do not know that I have fully responded to your concern. I agree with your concern. I do not disagree with your being concerned about the ethics and about where we go from here. I can only say that I will endeavour to see that this financing happens and that this building gets put back in order with the management.

Mr. Chairman: A short supplementary, Mr. Polsinelli.

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Mr. Polsinelli: Mr. Blott, you indicated something about phoning the ministry about a change of address. I am not sure what you were implying there, but from what I understand from the compendium of background information filed to this committee by Strauss, Cooper, Ariann Developments' solicitors, it indicates that the request for a new notice of change was sent to her at whatever address. She did not receive them because this was an outdated address for her and she no longer resided at this address. My understanding is that the corporations branch of the Ministry of Consumer and Commercial Relations requires a written notice of change of address for service. I am not exactly sure what you were referring to as to who phoned the ministry.

Mr. Blott: She did not. That is what I am saying.

Mr. Polsinelli: So she failed to notify the corporations branch that she had a new address for service.

Mr. Blott: And I made that very clear.

Mr. Polsinelli: Okay. I apologize.

Mr. Blott: The solicitors along the way should have filed that.

Mr. Polsinelli: I just did not understand.

Mr. Blott: The legal part, I said, the solicitor should have followed along the way. The ethical question was, who called and got this whole chain of events in motion?

Interjection: Her new solicitors.

Mr. Chairman: I think we would like to move on to other presenters, and if perhaps, if the committee wishes, we could have you recalled at a later date—or a later time.

Mr. Blott: At a later date?

Mr. Chairman: It may be a later date, by the time we get done.

We have Peter Apergy. Could you please identify yourself first?

Mr. Apergy: I am Peter Apergy. I was the treasurer of the former apartment owners' association, and I am now the treasurer of 235 Grandravine Inc.

I have a petition here with approximately 73 names from 235 Grandravine. The petition states:

"We, the co-owners of 235 Grandravine Drive, would like to oppose the application to the standing committee considering Ariann Developments Inc. for an act reviving it."

I am going to answer some of the questions brought up by the former speaker at this point. Quite a few of the co-owners have stopped making payments to Ariann Developments on two or three grounds: (1) Their charter has been revoked. (2) No financial statements have been submitted to the co-owners from Ariann Developments.

Nobody knows where the mortgages stand. Nobody knows where money has been spent on common elements. Nobody knows if the proposed budget Ariann Developments had submitted to us in September 1987 is an actual budget. There seem to be discrepancies in the tax collection. Apparently, the proposed budget calls for \$50,000 more in property taxes than the taxes actually are. There are caretaker fees of \$46,000 even though there is one caretaker and his wife in the building and a part-time caretaker now with a combined salary of approximately \$30,000. There seem to be discrepancies in maintenance and repair of \$87,000. For that one year alone, there has not been \$87,000 worth of repairs done to that building.

One question that was brought up earlier was, who called up the Ministry of Consumer and Commercial Relations? It was the North York bylaws department concerning parking lot irregularities. Apparently a building of this size is



supposed to have one visitor's parking spot for every eight units. Ariann Developments has assigned eight parking spaces where there should be 47. The other parking spaces have been sold off at a cost of \$1,000 or \$1,500 to the buyers of the units and has created a situation where visitors' parking does not exist any more.

Mrs. Logan's original prospectus on selling the units—there was apparently an early-bird special concerning the sale of those units. In that early-bird special, parking spaces were included in the price of the units at no cost to the buyer. Apparently in that situation, the parking spaces were thrown in but mortgage payments were added on those parking spaces.

Again concerning maintenance payments, in 1987, we received three increases in one year. I personally received an increase as soon I moved into the building, which was on September 4, 1986. My original payment should have been \$430. The next day I received a notice stating that there had been an increase of 20 per cent in maintenance and eight per cent in taxes, bringing the total to \$458.36. In July 1987, I received a letter from Ariann Developments confirming the figure of \$458.36. It was dated July 13. A few days later, I received another notice dated July 28 stating that my payments should be \$466.70 and that was taken back to my original purchase date.

This is just an example of the financial situation in the building. I am not the only co-owner who has received this. Everybody who owns a suite receives these things. That is why most people owe Ariann from \$1,000 to \$5,000 in back payments. Again, Ariann Developments tacks on a two per cent late-payment fee on these payments and it is on a monthly basis. The interest rate works out to over 48 per cent a year.

Personally, I, and some of the co-owners, have no objection to Ariann Developments being revived, on the condition that Ariann Developments will submit to us financial statements, records of banking and bills pertaining to the building so that we know exactly where we stand before she gets her charter back.

Mr. Chairman: Thank you.

Mr. Reville: Thank you for coming forward today. You were one of many people who have had difficulty with this outfit. In some cases, it is much more serious than a question of water in the pool.

Mr. Apergy: Yes, it is.

Mr. Reville: I guess you were one of the folks who bought a unit there in 1986, was it?

Mr. Apergy: Yes. I bought approximately three months after Ariann Developments started selling the units. The original purchase price on those units when she started selling in March 1986, I believe, was between \$38,000 and \$42,000. By the time I bought, the price had jumped \$10,000 per unit.

Mr. Reville: At that point, had you ever heard of the Rental Housing Protection Act?

Mr. Apergy: At that point, I was new in Toronto. I had been in Toronto for approximately one month, I was looking for a place to stay, I found that rents in the Toronto area were exorbitant, I just happened to find this ad in the newspaper, and that is why I bought there.

There was no information given in the office. We were all informed that the building would be converted and that Ariann Developments would convert the building to condominiums, that units would be turned over vacant and in good, clean condition, that certain upgrading would be done in the building, such as copper plumbing, which was partially done; a roof, which again was three-quarters replaced; the hallways and the carpets, which were done except for two floors, and those carpets were just slapped on top of the old carpets. It was just cosmetic to make it look as if something had been done.

Mechanical systems were supposed to be up to par. Of the two boilers in this building, only one has worked in the past two years and the second has been repaired just recently. The sauna and whirlpool which were promised still are nonexistent. The elevators are still running under an expired inspection certificate.

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Mr. Reville: Is anybody here from the Ministry of Consumer and Commercial Relations?

Miss Levine: I am.

Mr. Reville: You had better check those elevators.

This particular operator gives landlords a bad name, I can tell you. I am inclined not to revive this charter at all, but I wonder if you have any suggestions. Would you like a deferral so that you have a bit of a lever to see if you cannot sort out some of these things?

Mr. Apergy: Yes. I would like a deferral.

Mr. Reville: How long?

Mr. Apergy: A month, if possible.

Mr. Reville: Mr. Chairman, there is a litany of stories about this operator that would make you wonder whether the people involved should be running any kind of corporation at all. I wonder whether under these circumstances people might be inclined to defer this matter for a month and give the people at 235 Grandravin and elsewhere—Lakeshore is another instance I can think of, where there are 350 work orders against the buildings there—a chance to see whether this owner might start to obey some of the laws of this province.

Mr. Chairman: Mr. Reville, I do not want to jump to—

Mr. Reville: That is a suggestion. It might be helpful—

Mr. Chairman: Yes. I appreciate that, but the other point I would like to inquire about at the same time is that if a further month's delay is granted here, if rents are not being collected and if the company cannot receive money, is the matter just going to get worse? I would like, perhaps, Mr. Apergy to comment on that.

Mr. Apergy: At this point, again, most of the co-owners have no objection to actually making their payments, but we would like information concerning where this money is going. We have been assured by Mala Logan and Ariann Developments, in fact back in July, that a financial statement would be



prepared by September, which we never received. We had a meeting recently where, again, her controller assured us that this financial statement would be prepared and submitted, which it has not been yet.

It seems that Ariann Developments only works under stalling tactics, and we are not prepared to make payments at this time until Ariann Developments gives us some kind of financial information.

Mr. Chairman: Does any other member wish to comment or ask questions?

Mrs. Stoner: I would like to comment. It certainly has been an eye-opener for members of this committee to see how this company has operated. I certainly recognize that the tenants and co-owners have some difficulties, but it seems to me that unless this company exists, it cannot be held responsible for its agreements. If it does not, then the co-owners and the tenants of other buildings and those other people involved will lose.

It seems to me therefore appropriate that this charter be reaffirmed and that the matters which have been raised here, which are obviously substantial, should be then taken to court, and they should be held to their agreements.

Mr. Apergy: At this point, we have no objection to dealing with a government body, if Ariann Developments' charter is revoked. In fact, at this point we prefer to deal with a body other than Ariann Developments concerning this situation.

Mr. Ruprecht: Mr. Apergy, you are the treasurer of the apartment owners' association. Is that correct?

Mr. Apergy: Yes.

Mr. Reycraft: How long have you been treasurer?

Mr. Apergy: Approximately a year now.

Mr. Ruprecht: Just let me understand all this correctly. What I am trying to determine is who is on the side of the angels, if there are any.

Mr. Reville: Mr. Apergy is the angel.

Mr. Apergy: I wish.

Mr. Ruprecht: If I am listening correctly, I think it sort of comes out this way, especially after listening to the questions my colleague asked earlier, that you are on the side of the angels.

Let's just find out about the mortgage payments. I would like to figure this out. Up till when have you made mortgage payments?

Mr. Apergy: Up until August, 1988.

Mr. Ruprecht: And then you said you stopped mortgage payments. Is that correct?

Mr. Apergy: That is right.

Mr. Ruprecht: Does that also imply that others of your association

have stopped? Did you have a meeting and decide concomitantly that you would stop the mortgage payments?

Mr. Apergy: Owners in the building have decided to stop payments on their own. Nobody in the committee recommended stopping payments; in fact, we recommended that they continue making their payments, but that they go back to their original contract and make the payments as proposed on their original contract.

Sub-co-owners asked: "If Ariann Developments does not exist and we are submitting money to Ariann Developments, is Ariann Developments keeping up with the mortgage payments and paying for taxes? Is Ariann Developments fulfilling its obligation? How can it fulfil its obligation if it is not an incorporated body?" Therefore, they stopped payment.

Mr. Ruprecht: I see what you mean. That sounds reasonable. If you do not know that Ariann pays the taxes, that sounds reasonable, in a way. But you also know, as treasurer of the association, that there is what is called the Landlord and Tenant Act, I am sure.

Mr. Apergy: Definitely.

Mr. Ruprecht: Consequently, you want to sort of back yourself or you want to ensure that no action in the future can be taken against you and the association.

Mr. Reville: He is not under the Landlord and Tenant Act, Mr. Ruprecht.

Mr. Ruprecht: You may be right, but he would know that under the Landlord and Tenant Act there are rents to be paid. Consequently, if he is the co-owner, there would be more mortgage payments that are coming due and would have to be paid in order to have water, sewers and those kinds of infrastructure services, so that you can continue living there, I am pretty sure. I am just wondering whether you had made that conscious decision not to make your mortgage payments or whether you had decided to withhold these payments because your services were no longer in operation. Did you have a cutback in services at all? Was the water shut off or the heat cut off?

Mr. Apergy: No, the water was not shut off and hydro was not shut off.

Mr. Ruprecht: Nothing was shut off?

Mr. Apergy: No.

Mr. Ruprecht: Okay. My question to you then would be, why would you not decide to start a trust account, so that no one would possibly question any motives at all?

Mr. Apergy: I have personally started a trust account for my own portion of the payments. To those people who have stopped paying Ariann Developments, we have advised them to put the money aside, open up a trust account to have the money available because it will have to be paid eventually.

Mr. Ruprecht: Was this done because you had a meeting of the



association or was this done totally individually and there was no communication among yourselves as an association?

Mr. Apergy: This was done on an individual basis. It was not done on a recommendation of the association, no.

Mr. Ruprecht: Have you had a meeting since August?

Mr. Apergy: We had one meeting in September; I believe it was September. It was to elect directors to a corporation we had just formed. At that point, our lawyers suggested to the co-owners that they keep making their payments but that they pay only according to their original contracts.

Mr. Ruprecht: I understand. You sound quite reasonable to me. I am wondering whether you would actually benefit if Ariann collapses.

Mr. Apergy: At this point, if Ariann collapses, we would probably put ourselves in a position where we would have more trouble than ever before, but we are prepared to deal with that trouble. We feel that if Ariann does collapse, if it is thrown into receivership, we would have to deal with the receiver or a government body to get this mess straightened out. We prefer to deal with them than with Ariann Developments. At least if they tell us they will do something, they will. With Ariann Developments, we have promises and they are never fulfilled.

Mr. Ruprecht: Mr. Chairman, will you permit me to make a statement or do you want other members to make statements first?

Mr. Chairman: Go ahead, Mr. Ruprecht. You are the last questioner I have, so go ahead.

Mr. Ruprecht: Mr. Apergy, you understand our situation here, I hope.

Mr. Apergy: Yes, I do.

Mr. Ruprecht: I think Mr. Polsinelli referred to this already and Mr. Keyes did, that essentially the charter was defaulted, I suppose on technical grounds, in a way. Yet I have sympathy for you, as most people would who know anything about tenant and landlord problems. At the same time, we are in a difficult situation here inasmuch as if we drag this out—we have heard from the solicitor, Mr. Blott, that there are certain bank loans, certain receivables, trust accounts, and that some tenants as you indicated yourself, and you seem to be very honest, are withholding rent. Consequently, from this perspective, there inevitably has to be chaos and Ariann will not be able to carry on without making its own mortgage payments, I would suppose.

1150

Mr. Apergy: If Ariann is not prepared to make the mortgage payments, then we are prepared to collect those payments from the individuals who owe it and make the payments direct to the banks themselves.

Mr. Ruprecht: I understand that. What I am simply saying here is that if you do not make the payments on the grounds—there may be two or three grounds, but one ground was that Ariann no longer existed as a company. Here we are dealing with this issue on the basis that it was a technical problem that got them into difficulties in the first place. It would seem to be reasonable that if they were reinstated, then you could make payments and they

would give you an undertaking which I think the solicitor, Mr. Blott, has done, that things would be improved, I hope at least to some degree.

Having said that, one, it is a technical problem, and two, if the situation continues that payments are not made, the company will inevitably face bankruptcy. Looking at the letters from the Treasury and the Ministry of Revenue which have no objection, and the public trustee who has no objection to reviving it, I think we would have to revive this company and trust that the solicitor speaks for his client and will do the best he can in order to improve the building.

Mr. Chairman: Are there any further questions? Before we continue, it is now five minutes to 12. We have four more presenters. What is the pleasure of the committee? Shall we carry on for another half-hour?

Mr. Reville: I have to leave at 12.

Mrs. Stoner: I have a meeting at 12.

Mr. Chairman: Okay. Can we at least have one more and perhaps we can adjourn. I am not sure that these people who have come here this morning—perhaps it would be inconvenient for them to come back another time and perhaps we could hear as many as we can. I will call Mr. Don Iwanow.

Mr. Iwanow: Good morning Mr. Chairman, and ladies and gentlemen. I am Don Iwanow. I live on a fixed income. I am on Canada disability pension. I paid for my unit, right cash out and in good faith with Mala Logan. Before I start, I would like to go back to the solicitor for Mala Logan. He read you a letter from apartment 1405. Apparently, this letter was drafted by Mala Logan's son, so this letter should be dismissed. The second letter was read falsely on 804 as of 235 Grandravine Drive. It is my apartment, and then he made the correction that it is Christie Street. You see here two of the letters which had not been presented to this committee at first.

Second, the solicitor of Ariann Developments had to turn over the key to 235 Grandravine Drive. Apparently, on October 25, 1988, at seven o'clock in the evening, our incorporation was voted in by more than 50 per cent. Where is the key, solicitor?

Also, I sent Mala Logan a letter stating—you have, of course, this letter in your file as well—what we spent on the solicitor and on other things.

Question 4: The National Bank where he got the letter. The National Bank was actually contacted by David Alexandor who is the solicitor for 235 Grandravine Drive and 580 Christie Street. We started negotiating with them and not with Ariann Developments. It is a false statement as well.

After buying the apartment from Mala Logan, I made all my payments. She promised in schedule A of the Ariann Developments co-owners agreement to provide us with the necessary updated expenses, which never occurred. Then, as of closing—I have here a signed letter from Ariann Developments—she sent exclusive possession. When I came to exclusive possession, after paying all my money in the trust account with a certified cheque, the exclusive possession was not (inaudible). There is the letter from my solicitor. If you would like to read it, go ahead.

Then my solicitor gave me a statement of adjustment to tell me the



maintenance is \$105 and the taxes are \$114. I have here a letter from Mala Logan stating that she will do all the work in my apartment prior to purchasing. I have pictures here which show that quite a bit of work was not done and is still not done. If you would like to view it, go ahead and do that.

Furthermore, the same day, when I came to occupy the unit on September 29, 1986, I sent a handwritten letter complaining about the malfunctioning, and nothing was done. Then I drafted a letter on November 18, 1986, and again, nothing was done.

I paid everything up to date. After moving in, I received right away a letter on November 19, 1986, saying my taxes went up eight per cent and the maintenance went up 20 per cent. So I start paying (inaudible) this, instead of having the common sense not to do so. Then I received another reminder, not dated but signed, that my payments went up to \$252.20. Then I again received another letter that my payments went up to \$358. Then I had a statement right after this that my payments went down to \$294.53. I have a letter here that if I do not make my payments on time, I am going to be charged \$25.00. I always made my payments on time.

She gave us in October last year a proposed statement, a budget, and everything seems to be going up and going up. Apparently, the only statement, which is not audited but was presented to the Residential Tenancy Commission on November 4, 1986, which could be actually used as an audited statement, and it is clearly written down—the maintenance we have here, municipal taxes again and then everything we paid for originally in her undertaking.

1200

I brought a letter stating everything. "Dear Mrs. Logan, president and co-owner of Ariann Developments Inc. I would like to thank you for your statement...." Then I showed her that the taxes did not go up April 10. I showed her year after year that nothing went up. She still never replied to it. This year, I was again, by paying everything every month, being gouged.

I prepared a statement of mine with the exact rundown, with her gouging interest rates. If her gouging interest rates should be applied—I would be able to collect that. The gouging interest rate on my bill would be close to \$700, which I think is awful, anyway. But I overpaid Mala Logan as per her statement on the operation cost, the tenancy rent review. According to our lawyer, he suggested we should pay only—I pay my tax bill at par right now, and I still overpaid her \$1,533.53.

Furthermore, in the undertaking, when we bought we paid up front credit to vendor, taxes and credit to vendor maintenance. I bought in August. I paid it for the remainder of the year. Right away, I start paying again. What kind of ripoff is this? I wrote her a letter. She never, ever replied to it.

Of course, as a good public citizen, Mala Logan did not pay her taxes as of June 1988, until I and one of my members got hold of the tax bills. Now we are faced with \$1,584.17 additional cost. I live on a pension. I am not a millionaire. Where should I get that kind of money from? We should be gouged?

Here is another statement. At the same time, Mala Logan sent us a bill that we have to pay \$295. She sells her apartment at a fire sale and gives a statement out on June 17, 1988, that says what she sent us—it is not true. It cost less. What kind of corporation is this? In one way, she is gouging from

us. On the other hand, she is fire-selling and trying to tell the people: "Listen, buy in, it's cheap. It's a fire sale."

Then I got a second reminder that I owe Mala Logan \$1,676.70, plus interest. Where is my interest, Mala Logan? You supplied the documentation to the government, not to me. You have to honour it. Your solicitor said everything will be honoured. Now perhaps the solicitor could reply to it.

Mr. Chairman: Mr. Iwanow, could you please direct your comments to the chairman.

Mr. Iwanow: I am sorry. Under the circumstances, I would like to ask the chairman and the members of this committee to postpone things because on May 25, 1988, I had a short notice from David Alexandor, shortly after lunch, that there was a hearing going on between Mala Logan, her solicitor and us. I rushed down there. Mala Logan was present. She promised us, right there in front of Mr. Cooper, her solicitor, our solicitor and me, that her audited statement would be due in July. It is now November; July is long gone. In this time, she had ample time to do anything, and she has not fulfilled it.

Then, at our election, where we were elected as a majority of 235 Grandravine Drive, Mala Logan was there. She could turn over the keys right now and she is (inaudible). Her accountant promised us again that the audited statement will come forward, and she sent us a letter prior to it saying that the audited statement would come. Now, when is the audited statement coming? In the year 25,000, 30,000 or a million?

If she supplies it, as a good corporate citizen of this land—God bless Canada—then she shall have her charter reinstated. If not, let her go into bankruptcy. She forced us to spend additional money, because we asked her to supply us with a statement of the owners that we could send out on the mailing list. We got the statement; we got all the mortgages. We went to 228 Dundas Street West and did the search, because there was no co-operation from this good, God-blessed citizen, Mala Logan of Ariann Developments. Where does it go from there? Keep on pumping money in? What is the conclusion?

Her solicitor even told you something, and now he should deliver right here. If he delivers, if he tells us when the audited statement would be done, what will happen with my account, which I paid up—I did not pay it yesterday, because of this hearing; I withheld my cheque. But after the meeting is concluded, I am thankfully going to give her the cheque as taxes and maintenance after closing and nothing else, because I do not owe anybody anything until there is an audited statement. If I am wrong, then the audited statement will show that I am in arrears, for one reason or another, but it is doubtful. Then I am willing to pay her. That is the bottom line.

Mr. Chairman: Could I ask just a question before Mr. Reville? As you indicated, your association had a solicitor?

Mr. Iwanow: Yes.

Mr. Chairman: Has there been any legal action started, either you suing them or them suing you?

Mr. Iwanow: No, not yet, because I sent her the letter stating our expenses. We asked her to take out directors' insurance for it; she never even bothered to reply. We hand delivered this last Friday to her office, and the



expense—I appeared personally—was \$4,733.01 on behalf of 235 Grandravine Drive Inc.

Mr. Reville: Mr. Iwanow, it is useful that you spoke to us. I think Mr. Ruprecht will now understand that we are dealing with mortgagees here, not tenants.

Mr. Iwanow: I have no mortgagees. I pay my—

Mr. Reville: You are a mortgagee yourself, right?

Mr. Iwanow: No, I own—

Interjections.

Mr. Reville: Okay.

Mr. Iwanow: I paid all with my livelihood.

Mr. Reville: I do not know whether you got a chance to look at this deal. There are four mortgages offered here, two of which have no interest. This is a weird thing. I am addressing some information to you, Mr. Ruprecht. Do you object to a month's deferral? Could you come back in a month?

Mr. Iwanow: I would rather see—

Mr. Reville: You could come back every day, probably.

Mr. Iwanow: Every day, yes, as soon as she gives me the audited statement. If she gives me that now, I will come back in one hour. I will come back in two hours. I will come as soon as she is willing to propose that and give us time to look into it. I have no objection.

Mr. Reville: One of the dilemmas, you will understand, is that this committee does not have the ability to decide whether or not somebody owes somebody money. That is not the point of this committee.

Mr. Iwanow: Yes, I do realize.

Mr. Reville: Right. We have a very complicated situation here. It may be that there are other people who want to address it. There is a whole story about 580 Christie that could be told. There are stories about three or four properties on the Lakeshore. I cannot imagine why the committee would want to revive this charter, but it might want to give people such as yourself an opportunity to have some further negotiations and try to get satisfaction from Ariann.

Mr. Iwanow: She never replies to anything; I am sorry.

Mr. Reville: She might now if the charter is not forthcoming.

Mr. Iwanow: That is right. That is correct.

Mr. Reville: Would it suit you if we looked at this again in a month's time?

Mr. Iwanow: Yes. That is correct.

1210

Mr. Keyes: Surely the principals of this company and the solicitors should be able to understand some of our frustration with this process today as well. I am not sure whether you are looking for motions or not. I hear Mr. Reville saying a month, but I think the urgency of it, to me, is a problem.

I think a month is too long, and yet something shorter may not be enough time to do something. I would think that perhaps a two-week delay in hearing it again means there is just one hell of a lot of work to be done by Ariann Developments in two weeks' time and that we should put it off for just two weeks. That way, perhaps, the principals would not take that too much to heart as to foreclosing on the other banks if we see it done in two weeks as opposed to a month's time.

Mr. Chairman: Would you be prepared to make that motion?

Mr. Keyes moves that this decision be deferred until two weeks from this date.

All those in favour?

Mr. Ruprecht: Let's have a discussion on it first. We cannot just rush into a vote without its being discussed.

Mr. Chairman: All right, go ahead.

Mr. Ruprecht: I would like to hear from the solicitor what kind of repercussion this decision would make in this specific instance. If it is possible without having heard the other deputants who are present, then I would request that you call up the solicitor and see what kind of response he would have to that recommendation.

Mr. Reville: On a point of order, Mr. Chairman: There are other deputants here who may wish to speak. I might point out that it is 12:15 p.m. I do not know how many people wish to speak, but my point is that it would be interesting to find out from them whether they would come back in two weeks to speak.

Mr. Ruprecht: I would prefer, with your having a motion on the floor, if it were possible to hear about repercussions from the other side. The deputant has made a good case, I think.

Mr. Chairman: There are three other members of the public who wish to make presentations.

Mr. McCague: I think the problem you have is that you set aside time, whenever that ends, to hear the people in opposition to the revival of this company. Here we have a motion that really intercepts what the plan for the day was. That was to hear the people opposed; then, I presume, to hear the solicitor for Ariann and then make a decision.

Mr. Keyes's motion may be in order, but on the other hand, what is preventing us from meeting next week to carry this on, as would be the proper fashion, given the traditions of this committee?



Mr. Reville: On a point of information, I understood that the committee was not meeting next week. Is that correct?

Clerk of the Committee: It has not been decided.

Mr. Chairman: We could meet next week. Are you suggesting an amendment to the motion?

Mr. McCague: I am just pointing out that I am not sure what the gist is of what Mr. Reville suggested and what Mr. Keyes is suggesting, given that we are stopping in the middle of a hearing on this bill or a discussion of this bill.

Mr. Keyes: I have a little explanation. First, it is my understanding that, basically, we can do our timetabling on the basis of a set period of time—most logically, when we come here from 10 o'clock until 12 o'clock. I had a 12 o'clock appointment. That person is still waiting for me in my office. That is one of the major reasons. I feel we are just interrupting a process here. My two-week suggestion was partly based on the fact that we would continue it as the first item in the next meeting.

I thought surely that the two weeks would also give some indication that some parties might do a lot of work between now and then. It was not to try to cut off the opportunity for those who are speaking in opposition to make their case or to prohibit the solicitor from responding as well to the opposition that would be heard, although we did have an number of statements made in anticipation of the opposition. That is all I am doing by my motion to set it aside for the two weeks.

Mr. Chairman: Is there any further discussion?

Mr. Blott: Mr. Chairman, listen, if you are going to set it aside for two weeks—

Mr. Chairman: Would you come forward to the microphone, please?

Mr. Blott: If you are going to defer this, Mrs. Logan wants to speak to it.

Mr. McCague: I would move that we adjourn until 10 a.m. a week from today.

Interjection: I second that.

Mr. Chairman: You are moving an amendment?

Mr. McCague: What happens with a motion for adjournment?

Mr. Keyes: I would prefer to run, if we may, under parliamentary procedures of amendments to a motion, so it does not matter.

Mr. Chairman: He is proposing an amendment to the motion.

Mr. Keyes: An amendment that it be to next week instead of two weeks.

Mr. Chairman: Is there any further discussion?

Motion agreed to.

Mr. Chairman: The main motion, as amended?

Motion agreed to.

Mr. Ruprecht: We are going to meet in here in this room, hopefully, a week from today, 10 o'clock.

Mr. Chairman: The ninth. it will be the first item of business.

Interjection: The only item of business.

Mr. Chairman: The meeting is adjourned.

The committee adjourned at 12:16 p.m.





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STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

ARIANN DEVELOPMENTS INC. ACT  
ORGANIZATION

WEDNESDAY, NOVEMBER 9, 1988





STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

CHAIRMAN: Furlong, Allan W. (Durham Centre L)

VICE-CHAIRMAN: Lipsett, Ron (Grey L)

Keyes, Kenneth A. (Kingston and The Islands L)

Leone, Laureano (Downsview L)

McCague, George R. (Simcoe West PC)

Miclash, Frank (Kenora L)

Pollock, Jim (Hastings-Peterborough PC)

Reville, David (Riverdale NDP)

Smith, David W. (Lambton L)

Sola, John (Mississauga East L)

Substitutions:

Bryden, Marion (Beaches-Woodbine NDP) for Mr. Reville

Ruprecht, Tony (Parkdale L) for Mr. Miclash

Also taking part:

Grier, Ruth A. (Etobicoke-Lakeshore NDP)

Nixon, J. Bradford (York Mills L)

Clerk: Manikel, Tannis

Staff:

Klein, Susan, Legislative Counsel

Revell, Donald L., Senior Legislative Counsel

Witnesses:

From Ariann Developments Inc.:

Blott, Allan, Solicitor

Individual Presentation:

Alexandor, David F., Solicitor

From 580 Christie Street Co-ownership Corp.:

Menear, John, President

Individual Presentations:

Mayo, Ed, Tenant and Member, Board of Directors, 235 Grandravine Drive

Gay, Ruth, Apartment Owner, 235 Grandravine Drive

Valentine, Veronica, Tenant, 235 Grandravine Drive

From the City of North York:

Moscoe, Howard, Controller

Individual Presentations:

Dimas, Chris, Apartment Owner, 235 Grandravine Drive

Lipson, Norman, Solicitor; with Fogler, Rubinoff

Katz, Brian, Tenant, 580 Christie Street

From Johnston and Daniel Ltd.:

Donnelly, Rosemary, Realtor

Individual Presentations:

Kales, Sheldon, Apartment Owner, 580 Christie Street

Chylova, Edita, Co-Owner, 580 Christie Street

Even, Michael, Business Consultant



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Wednesday, November 9, 1988

The committee met at 10:08 a.m. in committee room 1.

ARIANN DEVELOPMENTS INC. ACT  
(continued)

Consideration of Bill Pr66, An Act to revive Ariann Developments Inc.

Mr. Chairman: The committee will come to order. Mr. Nixon, welcome again. This is the continuation of the hearing on Ariann Developments Inc., which was adjourned from last Wednesday to this morning. I understand there have been some developments between last week and this week. Perhaps it would be appropriate if Mr. Blott could make a statement at this time, and then we will call anyone else who would like to be heard.

Mr. Blott: I would like to report that Ariann Developments Inc., Mrs. Logan and myself have had extensive meetings with the representatives of 235 Grandravine Drive and their corporation, which you heard mentioned last week, and their representatives. As well, the representatives of 580 Christie Street met with us extensively.

I might add that we had several discussions immediately subsequent to our appearance last Wednesday, and then yesterday we met almost continuously from 1 p.m. in the afternoon until 4 o'clock this morning in an endeavour to reduce, if not extinguish, all of the issues that have been mentioned in various documents submitted to this committee.

I am pleased to advise that I have filed with your clerk a copy of minutes of settlement entered into by Mrs. Logan on behalf of Ariann Developments Inc., along with the representatives of the corporation for 235 Grandravine Drive, as well as representatives for the corporation for 580 Christie Street.

These two documents, in my submission—and I will in a moment call on the solicitor who represents these two entities. His submission, I believe as well, basically resolves the issues that have been previously described to this committee. It resolves the concerns as to the handling of the financial statements, the management of these buildings. It sets the framework for the continued management by Ariann or the replacement of Ariann by another management entity. It is an undertaking by Mrs. Logan to provide them with up-to-date financial statements within a time frame that is reasonable. It is quite a comprehensive document that reflects many hours of negotiation. I am pleased to submit this document to the committee this morning.

With your permission, I would ask David Alexandor, the lawyer who has represented both of the people who appeared before you last week, as well as the respective corporation, to confirm the results of our meetings and discussions. He is here and he would just like to come forward.

Mr. Chairman: For the information of the committee members, the agreement is being copied at this time. It will be available to you in a moment or two. Perhaps Mr. Alexandor then could come forward. Please identify yourself for the purposes of Hansard.

Mr. Alexandor: My name is David F. Alexandor. I am legal counsel for the corporations that represent the co-owners for the purposes of administering the property and managing the buildings. I do confirm what Mr. Blott said. We have reached an agreement that we are pleased with that deals with virtually all of the substantive issues that I understand have been mentioned or referred to or were a source of some irritation.

As a result of these agreements, I can state that the directors of the corporations support the immediate, unconditional revival of Ariann Developments Inc.

Mr. Chairman: At this time, we do not have the copies yet, but do members of the committee have questions about the negotiations or that they would like to put to either gentleman?

Mr. Keyes: I have a question on a matter of somewhat, I suppose, a technicality, but we have heard representatives from the owner and Ariann Developments and also from the co-owners, Grandravine and Christie, but do we have numbers of other persons not represented by those who want to make presentations today or not?

Mr. Chairman: I will be calling for that. It is my understanding that there may be one or two who wish to, but at this stage, if there are any questions with respect to the agreement that can be asked now, we could then recall both Mr. Blott and Mr. Alexandor afterward if other questions arise out of what we might hear.

Mr. Smith: Does the legal counsel of the government have any problems with any of these agreements?

Mr. Chairman: I do not think they have had an opportunity to review them yet. I do not know.

Mr. Smith: Is it fair, then, to say that we can make a decision today? I am just asking questions.

Mr. Chairman: I think we should probably reserve that until after we have heard from someone. I suspect this may be the basis of some satisfactory results which would help everyone. If we could wait until after we have heard everyone, we could discuss that.

Mr. J. B. Nixon: I would just like to remind the committee that the solicitors for the Ministry of Consumer and Commercial Relations, the public trustee and the Ministry of Revenue have already given approval, for Mr. Smith's benefit, to this bill. Whatever is being put before you today I do not think bears directly on the technical question before the committee of whether or not this company or corporation should be revived, although counsel for the various parties may have a comment on that matter.

Mr. Chairman: I share your concern. I think we will allow those others who have asked to address the committee. We will hear them, and then after that is done, we will call you gentlemen back. I expect that the decision will be made this morning.

Mrs. Grier: May I just ask a question?

Mr. Chairman: Yes.



Mrs. Grier: What does this development do for the tenants of other buildings owned by Ariann Developments? Are they party to this in any way, or are they affected by this?

Mr. Chairman: We have not had representations from any other tenants.

Mrs. Grier: Other than Grandravine and Christie.

Mr. Chairman: That is right.

All right. John Menear, could you come to the microphone, please? Could you identify yourself first?

Mr. Menear: My name is John Menear. I am the president of the 580 Christie Street Co-ownership Corp., which is responsible for managing the building on behalf of the co-owners. We are satisfied with the agreement that is in place. David Alexandor has said anything that we wanted to say to the committee, and we are certainly in support of the revival of Ariann Developments.

Mr. Chairman: Thank you very much. Any questions? No questions. Alan Coulter? Ed Mayo?

Mr. Mayo: My name is Ed Mayo. I live at 235 Grandravine Drive. I am a member of the board of directors there and I support the immediate, unconditional revival of Ariann Developments Inc.

Mr. Chairman: Thank you. Any questions?

Mr. McCague: I am wondering, now that we have heard from the two solicitors, the president at 580 Christie and Mr. Mayo, if it is an appropriate time to start in motion the approval of the revival of the company in question.

Mr. Chairman: My understanding is that there may be one or two individuals—and I do not know which ones they are—who, notwithstanding that agreement, would like to address the committee. There are only a couple more on the list. If I could just go through them, I am sure it will take only a minute or two.

Mr. McCague: Okay.

Mr. Chairman: Howard Moscoe. Is he not here? Ruth Gay. Could you identify yourself please.

Mrs. Gay: My name is Ruth Gay. I have come to this committee to present my experience with Ariann Developments and its president, Mala Logan.

I purchased two apartments from Ariann Developments in August 1986 at 235 Grandravine Drive. The closing date was October 9, 1986.

Exhibit A is a signed undertaking by Mala Logan to do certain repairs at her expense. I bring attention to items 2 and 4. Item 2 was never done, and item 4—namely, sauna and swimming pool equipment being part of the mechanical systems—was only partially done.

I received a letter, exhibit B, from my lawyer, dated October 14, 1986, outlining my payment schedule: apartment 601, \$455.45 a month; apartment 1610, \$573.88.

I received exhibit C, a notice of payments, from Ariann Developments, on October 17, 1986, showing the following: apartment 601, \$481.03; apartment 1610, \$602.96. The fiscal year as indicated on exhibit C is September 1 to August 31, 1987. Upon contacting Mala Logan, I could never get an answer to this.

Exhibit D is a letter dated April 7, 1987, from my lawyer. His opening remarks, "At long last," only a seven-month delay in receiving my legal papers for the two apartments.

I received exhibit E on the operating budget for the year 1987 to 1988. In response I sent a letter requesting audited statements for previous years. None was forthcoming.

I received exhibit F, dated February 16, 1988, concerning the third mortgage. The reason I was told the mortgage was called was due to the incorrect method by which it was applied for by Ariann Developments. Upon advice from my lawyer, I responded with exhibit G.

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On March 31, 1988, I sent exhibit H to Mala Logan requesting audited statements. To this date, I have not received any.

Because of all the difficulty and emotional stress, I decided to sell the apartments. Exhibit I is a copy of the listing. I received an offer of purchase for apartment 1610 dated April 21, 1988, with a closing date of May 27, 1988. See exhibit J.

I notified my lawyer of the transaction, and from that, I received exhibit K, an extension on closing due to Ariann Developments not processing the necessary papers. My lawyer submitted a cheque to Ariann Developments, as personally requested by Mala Logan, for \$150 before she would send out the required papers. As time dragged on, the deal eventually aborted. Finally, exhibit L, dated August 2, 1988, was received from my lawyer informing me the deal had been aborted.

The sole reason this sale was cancelled was the failure of Ariann Developments and its president, Mala Logan, to deliver on time the required documents. Although this sale was cancelled, I was left with a legal bill of over \$1,000. To this date, Ariann has not repaid even the \$150 it received for services it did not do. At no time did Mala Logan or her staff ever indicate that her charter had been revoked. I cannot understand how a company can operate—for example, do banking—when it is not in existence.

It is my understanding that the various levels and branches of government function to protect people from such devious and dishonest business practices as have so often been exhibited by Ariann Developments and its president, Mala Logan. To allow Ariann Developments to continue in business would only cause more emotional and legal grief for anyone who crosses its path.

Mr. Chairman: Are there any questions?

Mr. Keyes: I gather that Ruth Gay is still the owner of two properties. I wonder what her comment is to the agreement that has been stated this morning, on behalf of the owners, by the solicitor. She may not also have seen it, but I wonder if she is concurring or disagreeing with the statement of the solicitor.



Mrs. Gay: I have mixed feelings about it. Certainly if Mala Logan comes through—she has never come through before—then okay, I will go along with it, but I do not trust her.

Mr. Keyes: But there is a legal agreement presented by the solicitor for Ariann Developments and the solicitor for the owner. Are you a member of the group of 235 Grandravine Drive, the new corporation that was formed?

Mrs. Gay: Of the board? No.

Mr. Keyes: Not of the board, just a member of the corporation.

Mrs. Gay: Yes.

Mr. Keyes: I understand it was a corporation that Mr. Alexandor was speaking for. Are you a member of that group?

Mrs. Gay: Yes.

Mr. Keyes: Therefore, you have just expressed some reservations. Since your solicitor has concurred in it, then, in essence, you are bound by that as well, but you are expressing your own concerns.

Mrs. Gay: Yes.

Mr. Keyes: Thank you.

Ms. Bryden: Mr. Chairman, I am taking Ruth Grier's place for the rest of the morning.

Mrs. Gay, you said you had \$1,000 worth of bills just in your own negotiations—

Mrs. Gay: To be correct, \$1,001.

Ms. Bryden: —with Mala Logan and with Ariann Developments. Have you ever asked them to pick up these bills, since it was really their fault that required you to go to a lawyer?

Mrs. Gay: My lawyer asked, but no go.

Ms. Bryden: It disturbs me that there seems to have been rather poor relations between the corporation and the tenants. When they are asking for revival, certainly the committee does not always feel as inclined to revive a company unless it has a fairly good track record. This is one reason they have to come to the Legislature to get the revival.

However, you do concur in the agreement that the co-owners have now apparently made. As you say, if implemented, it will, we hope, solve the problems in the future and protect the tenants as well as the owners.

Mr. Chairman: Are there any other questions?

Mr. Smith: Mrs. Gay, you have made a comment in this article or letter that you have drafted. Are you expecting the committee to make a decision on this \$1,000 that you feel is owed to you from Ariann, or is this just a comment that you have put in writing?

Mrs. Gay: I just came here to let you know my experience with Ariann Developments. I do not know how I will ever receive my \$1,000 back, but I had a buyer for apartment 1610. It is very hard to sell an apartment with a tenant, as I do there, but I got a buyer for mine and it was aborted. I was so happy because I had a buyer.

Mr. Smith: Could I ask the chairman then; is that even part of this committee's jurisdiction to make any—

Mr. Chairman: No. It is not, Mr. Smith. This may be a legal problem between Mrs. Gay and Ariann that she will have to deal with, and I understand from her comments that her lawyer probably has that in the works at this time.

Mr. Smith: Thank you.

Mr. Ruprecht: I have just a quick question on all the paper I have in front of me. Do you still have the two apartments?

Mrs. Gay: Yes.

Mr. Ruprecht: Are you in the process of selling one?

Mrs. Gay: Not now.

Mr. Ruprecht: Do you want to sell one?

Mrs. Gay: She never came up with the papers and that, so what can I do? She has tied me up.

Mr. Ruprecht: But if she would come up with the papers, you would sell one, or two?

Mrs. Gay: I would sell one.

Mr. Ruprecht: You live in the other one, do you?

Mrs. Gay: I can sell it again with a tenant there. That is a hard thing to do.

Mr. Ruprecht: You stand to make how much on this one: \$40,000?

Mrs. Gay: I was selling it for \$60,000 to get rid of it.

Mr. Ruprecht: Just to get rid of it.

Mrs. Gay: To get rid of it and try to get out of there. At that time, I had apartment 601 for sale as well, but they were both for sale at the same time. I just wanted to get away from—

Mr. Ruprecht: Roughly, on the average, how much would you make, let's say, if you sold it, from when you bought it? I see the offer of sale here, agreement to purchase and sale. If this is correct, you wanted to have \$79,000, and you got \$60,000.

Mrs. Gay: That is what I wanted but the person who came along who wanted to buy it offered \$60,000, and I was willing to—

Mr. Ruprecht: To just get rid of it. I see.



Mrs. Gay: —just get out of this nightmare.

Mr. Ruprecht: How much did you pay for it, did you say?

Mrs. Gay: On 1610: \$49,900.

Mr. Ruprecht: You bought it at \$49,900?

Mrs. Gay: The amount that she was asking.

Mr. Ruprecht: I see. Thank you.

Mr. Chairman: Thank you, Mrs. Gay.

Mrs. Valentine, would you please identify yourself first for electronic Hansard?

Mrs. Valentine: Veronica Valentine of 235 Grandravine, apartment 802.

I was one of the first buyers in the building from Ariann Developments, and at the time of purchase, I received a statement from Mrs. Logan. She and her son told me personally that they were going to fix my apartment before moving in. At the time of purchase, there was a tenant in there, and he left after one year. I moved in the next year and within that period of time, Ariann had done nothing to the apartment.

The apartment had a lot of problems in it. All the walls were peeling off, the carpet in the living room was wrecked and the bathroom, most of all, was really wrecked. It had a big hole. All the tiles were falling off. Ariann and her son told me personally they were going to look after these problems. I even got a statement from them saying they were going to do it.

One thing I would really like to say is, why is it that she gives all these promises and nothing was being done? Also, I did not buy parking at the time of purchase, and now, as I understand it, every owner has parking, which I do not have. I would like to know why I am being cheated out of this. Also there are locker rooms, which I am not notified about. Other owners have locker rooms and I do not. In the meantime, I got a letter from the committee saying, "Do not put storage on your balcony." Where am I supposed to put storage?

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The main problem I find is that I am being told by Mrs. Logan that repairs are going to be done on the unit and fixtures are to be replaced, but nothing happens. This is very frustrating because a lot of this work I did myself, which she could have done. I would gladly appreciate some answers and questions on this.

Mr. Chairman: Mrs. Valentine, are you aware of the agreement that was entered into yesterday or early this morning?

Mrs. Valentine: No. I was not aware of that.

Mr. Chairman: Do members of the committee have any questions?

Mr. Keyes: The questions might have to relate back to the solicitors when they appear. Mrs. Valentine has not seen the agreement. But in general,

could I gather from what is said by both solicitors that the majority of these problems would be resolved as a result of that agreement?

Mr. Chairman: You are reserving your questions?

Mr. Keyes: I will reserve that. Maybe the answer is already known by yourself or not. We reserve it, but it is relayed to Mrs. Valentine. Which unit does she own, so we can refer to the right one. Which unit do you own, Mrs. Valentine?

Mrs. Valentine: Apartment 802.

Mr. Keyes: You are the owner?

Mrs. Valentine: Yes, I am.

Mr. Sola: I just want one thing clarified. You stated that when you bought the apartment you did not buy parking.

Mrs. Valentine: I did not buy parking.

Mr. Sola : Later on in your statement you claim that you were cheated out of parking. Could you clarify that, please?

Mrs. Valentine: I did not buy parking. I made it known to my lawyer that I did not buy parking, but after speaking with some of the committee members, the ones who bought parking, it was given to them. They now own parking. Also, once she sold apartments—I do not know if it is before or after—she had parking included in the sale. She had parking included in it. I was not even aware of these situations.

Mr. Sola: I am still not clear, but subsequent buyers had parking included in their agreements?

Mrs. Valentine: Yes. Included in the sale.

Mr. Sola: Did they make special applications or was this an automatic inclusion? .

Mrs. Valentine: No, they did not. Not to my knowledge. In other words, she threw in parking in the sale. They did not buy the parking per se. She threw it in with the sale of the apartments.

Mr. Chairman: Any further questions? Thank you very much, Mrs. Valentine.

Ms. Bryden: I notice that Howard Moscoe arrived about one minute late for his appointment. Normally we would drop him down to the end, but I wonder if the committee might consider hearing him now because he is a municipal controller and is involved in municipal elections less than a week away. We have to have the consent of the committee.

Mr. Chairman: He is not involved in anything, is he at this stage?

Ms. Bryden: He is no doubt involved with his colleagues.

Mr. Chairman: Is it the pleasure of the committee that Mr. Moscoe be heard at this time?



Agreed to.

Mr. Moscoe: I am going to be brief because I understand that this turn of events took place last night and that there is a tentative settlement between the owners and Mrs. Logan. I think that is very positive thing.

There are a couple of concerns that I think need to be addressed. Of course, 50 per cent of the people in the building are tenants. They are unrepresented here other than by myself. They have not had an opportunity to examine the agreement that has been hammered out. They have not been a party to its construction.

I would just like to talk about a couple of outstanding matters. I am going to request that you defer this for one week and one week only, so that the tenants have an opportunity to review that agreement. I am hopeful that the three parties, then, can come in support of that arrangement.

Let me list a couple of outstanding items that I think need to be reviewed. An issue was raised in the House about converting to rent. This company received \$7,000 each for seven units to construct rental units on the ground floor. These units were, in fact, sold. As a matter of fact, David Lewis Stein of the Toronto Star was offered one of the units to purchase and I was refused the opportunity to rent one.

So this matter has been before the House. The Minister of Housing (Ms. Hosek) has examined this matter. She is also in the process of further examining the whole convert-to-rent aspect of this program. I think that matter needs to be reviewed within the next week internally, perhaps by the proposer of the legislation or perhaps by the local MPP, prior to the unconditional resurrection of this corporation. That is one outstanding matter.

The second outstanding matter is that the corporation was in violation of the North York parking standards with respect to visitor parking when the building was constructed. Our bylaws require a number of visitor spaces to be provided. The city has been involved in this. I think that matter needs to be resolved as part of the agreement between the owners and the corporation.

There is a question of municipal taxes. I understand one cheque for the taxes bounced and I understand that has been made good on. There are still some matters related to municipal taxes that have not yet been worked out. I do not know if they are part of the agreement. I do not know if the parking spaces are part of the agreement. I do not know if the convert-to-rent matter is part of the agreement because I understand the agreement was only concluded in the middle of the night last night. I think those matters merit at least a little bit of consideration and examination.

Furthermore, the tenants are all up in the air with respect to this matter. You realize that if this building gets converted to some other form of tenure, notwithstanding the Rental Housing Protection Act, the tenure of all the tenants is in jeopardy. If, for example, this building ultimately ended up as a condominium, the tenants would be evicted. These are people who have lived there for a long number of years.

I am sure all these four issues I have raised are issues that can be worked out with a little bit of good faith on all sides. There is nothing like the last-minute squeeze to put the pressure on all parties to work these kinds of things out. But if you grant this today, at this point, you remove any levers the tenants may have to see these matters resolved.

I am hoping they can be resolved by the end of the week and that all parties can come in with a reasonable resolution. That is the way it works at the municipal level. I know many of you have been at the municipal level. I would hope you might grant this reasonable request. I think the corporation, or the noncorporation, can hang in for one more week to resolve these matters. I think that would be no problem for the owners, that one-week deferral.

#### Interjections

Mr. Chairman: We are not picking him up on Hansard, in any event.

Mr. Moscoe: Perhaps the committee could ask both of the other parties if they would agree to a one-week deferral. I am sure that would be the necessary thing which would allow these matters to be resolved. It would be unfortunate if you did not give the tenants the opportunity to review the agreement and have the loose ends tied down. I am confident that can happen if you would grant this reasonable request for a deferral.

Ms. Bryden: Suppose it is not resolved in a week. If the two parties do meet and if we hear from the tenants, should we say a deferral of one week or notify the clerk of the committee when you would be ready?

Mr. Moscoe: I think there is nothing like the pressure of time to help parties resolve a situation. I think one week is just satisfactory.

This matter has been going on for a long number of years. Because of these committee's efforts, because of this piece of legislation and because of the owners' opposition, they managed to hammer out an agreement overnight. I frankly think the tenants' concerns, the city's concerns and maybe even the the Ministry of Housing's concerns can be resolved in a matter of one week, at best. Notwithstanding the municipal election, I am certainly prepared to put my best efforts into it. I am sure Councillor Li Preti, the local councillor, will lend his best efforts to the matter. I am sure the local member would, as well.

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Ms. Bryden: It certainly sounds like there are a number of matters hanging fire, including the municipal taxes not cleared up and the role of the ministry in the convert-to-rent agreement. But I would certainly support your request for a deferral for one week, especially since they are also in violation of the parking authority in North York. I think all those things should be looked at before this committee makes a decision.

Mr. Ruprecht: I do not know whether Mr. Moscoe realizes that this committee has already granted one week, after some deliberation last week. I think the reason why one week was thought to be acceptable at that time was because there was some serious doubt as to the ability of the company to be able to survive. I think before the committee discusses further changes and further postponements, it may be fair and agreeable that we hear from the company as to the position on their financial viability.

Mr. Moscoe: I have no objection to that at all. My only concern is that things that are done at four in the morning deserve at least perhaps another day or so. The company is a survivor. It has been around for a long time. It has survived admirably. I do not think one week is going to make the difference in the life of this company, but it sure will make a difference in the life of 50 per cent of the residents of this building who happen to be tenants, and it could make a difference perhaps to some of the owners.



I appreciate the fact that there has been a deferral for a week. I understand that deferral was to give the parties an opportunity to get together, but not all the parties were involved in that. If everyone could be satisfied by this, I think that is the best kind of solution. You well know, Mr. Ruprecht, at the local level that is the way we do things. I hope you would give that opportunity here for that to happen.

Mr. Ruprecht: I think before the committee decides, it may be a good idea to find out whether there has been some sort of reasonable accommodation and whether the company has tried to show some good faith. From my own perspective, what has transpired since then seems to me to be good faith shown.

Mr. Moscoe: Nobody is denying that.

Mr. Ruprecht: If at this point there would be no compromise and no discussion, then my own position would be to support you, but since there seems to be reasonable accommodation, including some of the tenants who spoke this morning before you came—I am not sure whether you are aware of this or not.

Mr. Moscoe: Yes, I have had some discussion with them. The tenants did not speak this morning to my knowledge.

Interjection: The co-owners.

Mr. Ruprecht: The co-owners, yes.

Mr. Moscoe: The owners did, the tenants were not participants.

Mr. Ruprecht: I understand what you said, that you are actually representing the tenants.

Mr. Moscoe: I represent everyone in the building by virtue of my elected office, but there is no one here apparently to speak for the tenants and I am doing that. I had some communication with them.

Mr. Keyes: I am sure Mr. Moscoe knows better than any of us here that if there are violations of municipal bylaws, they have their procedures through which they will go in order to redress those wrongs, if such is the case. I do not think we can hold up the reincorporation of a company based on whether or not a company has paid its back taxes, whether it has met the parking laws. The access, unfortunately, is to the courts on those, even though the issue has been raised as to whether or not money is granted by this government to them. That also is a legal matter which I would think would be resolved in the courts in due time.

I think the problem of trying to hold off any longer—I will ask that those issues Mr. Moscoe has addressed be responded to by the solicitors when they return to the table, but it was very difficult to find a genuine representative of the tenants in those buildings. As you know, in a building of this size, to try to get together a group of tenants who are renting premises and get legal counsel or whatever is quite difficult. I would not have too much hope that we would be able to have their interests represented and looked after easily by a lawyer before this committee.

This agreement that has been referred to that was drafted—I am impressed that because we forced the delay, they did get together—touches not on tenants, but simply on co-owners in two buildings, and there are two

separate agreements, so their examination of that document would have no validity because it does not apply to them.

I do not see at the moment that this delay would be appropriate. I strongly supported the delay we have had to this date and I am impressed with the progress that has been made by the parties. Perhaps those issues I have raised will be addressed by both solicitors when they return to the table.

Mr. Moscoe: There is a legally constituted tenants' group in this building. The president is Linda Christensen. She has asked me to be here on her behalf this morning. I am sorry if I did not make that clear.

Mr. Keyes: No, you did not.

Mr. Moscoe: I will make it clear to you at this very moment. The entire tenure of the 80 some tenants in this building is at risk. I ask you please not to make a precipitous decision until they have had an opportunity to discuss the agreement with the two other parties. That is a very straightforward, simple plea. Give them a week to examine the agreement and discuss the matter with the parties.

I do not understand the haste. It would be unseemly for any legislative body not to grant a reasonable request. That request was made last week of other parties. It was granted. Please grant the tenants that deference this week. I am sure the matter can be resolved to everyone's satisfaction.

Mr. Keyes: Just a question, I guess: It has now been clarified, which it was not before, that there is a lately constituted tenants' group. I am wondering why it did not make any representation at the previous opportunity: Were they not aware?

Mr. Moscoe: They became aware at the 11th hour that this was occurring. At this point, other than myself, they are not aware an agreement has been arrived at.

Mr. Keyes: But again, you would have to agree that this agreement does not touch on tenants, but rather on co-owners.

Mr. Moscoe: It affects immensely the tenure of the tenants in this building. If this building is reconstituted as a condominium, the tenants will be on the streets. They will be sleeping on Jane Street rather than in this building.

Mr. Chairman: That is not at issue here, though.

Mr. Moscoe: It certainly is an issue, Mr. Chairman; it is a very clear issue. If the building is converted to a condominium—I have not had an opportunity to read this agreement—they lose their protection under the Landlord and Tenant Act. That is very clear.

Mr. Chairman: My point was that whether it is converted or not is really not an issue for this committee.

Mr. Moscoe: It is, to the extent that the agreement is an agreement between two parties. That has suddenly become—all of the outstanding issues, it appears, have been resolved for two of the parties without the third party's being knowledgeable, without the third party's being involved.



I plead with you to give it the fullness of one week's time and then do what you will, but the very least opportunity you can grant to the people in this building is the opportunity to enter as part of these discussions and at least understand what is about to happen to them.

Mr. J. B. Nixon: I would just point out for the committee's information something Mr. Moscoe should be well aware of; in fact, I am sure he is. A decision under the Rental Housing Protection Act as to whether a building shall be converted to a condominium is a decision that is approved by the local council. In this case, it will be North York council and Mr. Moscoe, if he is successful in his election, unfortunately will not be there to be involved in the decision, but I am sure will exercise great influence none the less when North York council reviews that application, which is the appropriate place for that application to be heard, under the Rental Housing Protection Act.

Ms. Bryden: Mr. Moscoe, do you think there is more than the Rental Housing Protection Act involved here? Is not the other legislation of the Minister of Housing (Ms. Hosek), which is the Residential Tenancies Act, also involved? Therefore, should she not also be interested in this question of whether the tenant should—

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Mr. Moscoe: A lot of people should be interested.

Ms. Bryden: It is better the tenants have had adequate opportunity to express their views to this committee. I think it is one of the reasons—

Mr. Moscoe: This matter has festered for upwards of five years now. If it can be wrapped up in two or three weeks, that is fine, but I plead with you on behalf of the tenants of this building, give it another week. It will not hurt anyone. It may resolve a lot of concerns for a lot of parties. Again, I plead with the committee in good faith to give it one more week.

Mr. Chairman: Any further questions? Thank you, Mr. Moscoe.

Ms. Bryden: Mr. Chairman, can we make a motion now or would you like to hear the rest of the delegations?

Mr. Chairman: I would prefer to hear the rest of the delegations, but it is whatever is the pleasure of the committee.

Mr. Keyes: So would I. I see six other names listed here on the list of delegations.

Mr. Chairman: Is it the committee's pleasure to wait? Agreed.

We have six other names on the list. Perhaps I can call them in order. First, we have Chris Dimas.

Mr. Dimas: Ladies and gentlemen, I am surprised that—

Mr. Chairman: First of all, could you identify yourself, please.

Mr. Dimas: I am Chris Dimas.

Mr. Chairman: Where do you live, sir?

Mr. Dimas: I am not living in the apartment building, but I own an apartment in trust. My children have this apartment.

Mr. Chairman: Could you identify the unit and the address.

Mr. Dimas: Apartment 1505.

Mr. Chairman: In which building?

Mr. Dimas: At 235 Grandravine.

Mr. Dimas: I am surprised we are still fighting here for reinstatement of a company and are confusing the issues that are in front of us. The company was suspended for one reason, simply a matter of a technicality. The company did not notify the change of an address. All the other problems, if they are not totally irrelevant, at least are irrelevant to the issue and this is the reason:

Assume you do not reinstate that company, so that Ariann Developments is dead. Mr. Moscoe was talking about the parking problem. How is Mr. Moscoe going to work with a dead body? To sue whom? Ariann Developments does not exist. Assume the lady wanted to sell the two apartments she said she cannot sell because the third mortgage is owned by a dead body, Ariann Developments; that is out, too.

Assume you want to change your condominium or you want to do anything that you want to do, but Ariann Developments is dead. It is dead because it did not handle it in the proper time, which I grant you is correct—there is some mismanagement but that is not the point. They did not handle the accounting, the parking or hundreds of other problems. Since the management does not own the right percentage, they are going to be voted out by the tenants, as I understand it, because they were poor managers. That is finished.

My point is, how can we still talk here, confusing the issues and we do not say: "If you want to sue Ariann Developments, go ahead, but how are you going to sue Ariann Developments? Ariann Developments is dead. It does not exist." By delaying, you are causing many enormous problems. There are the tenants. Myself, if I want to sell, I cannot sell. Who will discharge the third mortgage? Ariann Developments does not exist. Who will negotiate? Ariann Developments does not exist. What you are doing here—it is not your fault and I know that. It is the fault of the circumstances.

I do not want to say anything about lawyers and what they want to do. The more they delay, the more money in their pockets. I have been in court for eight years; it was my misfortune, and I know that very well. I think that automatically, if it is possible—I know it is not possible—within the day Ariann Developments has to be reinstated, so anyone who wants to sue Ariann Developments can have an Ariann Developments to sue. I think Ken Keyes said that and he covered me, at least partially.

By the way, Mr. Moscoe, the people are not going to be thrown out because, first of all, the Landlord and Tenant Act is insufficient. It talks about condominiums. It does not talk about co-ops. It does not talk about co-ownership. Anything that is not in the law is an exception. No one wants to sell that as a condominium. They will sell it as a co-op. That is my answer to you.



In closing, I would like an automatic or quick reinstatement of the company so that we know where we stand, we know whom to sue and we know that we are dealing with a live organization, which is called Ariann Developments, and not hitting the bushes, etc.

Mr. Chairman: Can you hang on just a moment.

Mr. Dimas: Yes, of course.

Mr. Smith: It is just a question, but what Mr. Moscoe asked is, is it going to hurt you as an owner very much by delaying another week? Will it hurt you?

Mr. Dimas: It already hurts all the owners because the issue is the address. If Ariann Developments does not have good management, it is going to be thrown out, actually thrown out, because I know what is going on on the other side. I was at the previous meeting. They did not manage the property well; the management was poor. We have the vote. It is get out, finished.

Mr. Smith: But does it cost you money—

Mr. Dimas: Ariann Developments owes me \$1,000. Let me sue it. Sue whom? Sue whom if the parking is not done properly? Reinstate Ariann Developments and let the legal action take place and keep suing Ariann Developments. If Ariann Developments is not good enough, it is finally going to deteriorate to the point where it cannot stand up, but to come and say, "It is partly because I am going to delay...." Delay what? For what reason? To do what?

Even if this agreement is not in effect, if I want to sue Ariann Developments now, who am I to sue? For six months, I have been waiting to sue. To sue whom? A dead body? What is the confusion? Even without this agreement, which as I understand it and I have been informed by both parties—I have not read it—is a good one, how can we go ahead and do what we have to do if it is management, if it is owing \$129,000 which (inaudible) paid, and if it is delays in the accounting, how can we do anything without Ariann Developments?

I ask you, whom can I start suing? Mala Logan, the president? At Ariann Developments, Mala Logan was the president; that is fine. Assume she did bad management. The shareholders have to vote her out or the company is going to end in deterioration, but you cannot halt a company simply because it did not send the address. You can punish them or charge them. You can charge them \$1,000 or \$2,000. You can suspend them; you did that six months back. You caused a lot of trouble—anyone who is suspended—and it is not a nice thing. We are in a free country with free enterprise. Do you want me to laugh? I will save my laugh.

Mr. Smith: But you just said in your statement right now you have not read the agreement—

Mr. Dimas: I do not care if it is good—

Mr. Smith: —so you are not worried about that at all?

Mr. Dimas: At all? I can tear it apart. What am I do with it? I want to sue her. To sue whom? Ariann Developments does not exist.

Mr. Smith: That is fine.

Ms. Bryden: Mr. Dimas, I can appreciate that you and many other people are severely disadvantaged by the demise of Ariann Developments, but I do not know whether you are completely aware of the process this committee follows. We are the court of last appeal for somebody whose registration has expired and is no longer a body. It is a very onerous position we are in because we have to recognize that there are all sorts of interests affected, and we have to then recommend special legislation to the Legislature.

That is a very difficult thing for a government or any member of the government party and of the opposition to deal with. I think we have to be very careful that we are exercising our jurisdiction or our right in this particular case, as in other similar ones, to recommend not only for or against reinstatement, but possible terms or possible postponements. While it may disadvantage you, the fact that it disadvantages other people we have not heard from is something I think we have to consider. We have to be very careful that we do not recommend legislation that would look like a special privilege that should not have been exercised in this case.

Do you feel it is a special privilege that the owners and the corporation are asking for, which is not covered by the present Landlord and Tenant Act? I think that is true, is it not?

Mr. Dimas: Yes. It is not covered.

1100

Ms. Bryden: Have you requested amendments to the Landlord and Tenant Act?

Mr. Dimas: I had an appeal, but I dropped it because I do not want to use the courts in vain and because I know from the judicial system of the rough laws inside. Why waste my time? Actually, with my disability, I do not have too much time to waste. I dropped that appeal.

Ms. Bryden: I think a lot of it is due to the Landlord and Tenant Act being inadequate in this case, not dealing with this kind of thing.

Mr. Dimas: That is why I said I read it upside down.

Ms. Bryden: That is why the onus is on this committee more than ever to possibly rectify a situation that is not adequately covered by the present Landlord and Tenant Act.

Mr. Dimas: The question is—

Ms. Bryden: Other companies that have come before us in the last year—I have been on this committee for two or three years in the past—have had to suffer the kinds of disadvantages you and your co-owners are now suffering for a time, until we make up our minds, but I think we have to be very careful not to make up our minds on inadequate evidence.

Mr. Dimas: I appreciate you want to see that every individual is satisfied on his own problem, but all the suffering that we had in all of that, mine and others, as I see it, stands on one issue. We are suffering and we will suffer more because the company is not reinstated, so we have a dead body. What do we do with it? To sue whom? Ariann Developments does not exist. How do we sell our houses? I said all this. To go for the parking; to do what with a dead body? Reinstatement and action is going to take place by myself and others to sort out our difficulties. That is how I see it.



All the suffering is because Ariann Developments is dead. The Landlord and Tenant Act or any other things, to me, maybe partially touch the problem, but the problem is that we do not have someone to work with unless Ariann Developments is reinstated.

Ms. Bryden: You may have to wait a little, though, while this committee goes through the process of exercising its prerogative.

Mr. Chairman: Any further questions? Thank you, sir. Next we have Norman Lipson.

Mr. Lipson: My name is Norman Lipson. I am a member of the law firm of Fogler, Rubinoff. Our law firm has represented Ariann Developments in various commercial transactions over the past year and we have maintained the corporate records of the company over the past year. It only came to our attention that the company's charter was revoked through a technicality after it was too late to make the submission for a new address.

In the interest of the public, I believe it would be advisable to revive the company and for this committee to make its recommendation in that regard this morning. I feel that if there are any parties that have any legitimate complaints, this is not the appropriate forum for them to be made and that the failure to revive the company is only causing greater difficulty for the company and for any member of the public who wants to business with the company.

I strongly urge this committee to make that recommendation this morning.

Mr. Chairman: Are there any questions? Seeing none, thank you, sir. Next we have Brian Katz.

Mr. Katz: My name is Brian Katz. I have been a tenant at 580 Christie Street for the last two years. I have been a happy tenant there. I found, in my experience, the building to be maintained to my satisfaction.

From listening this morning, I too think it is very important that we stay focused on the central issues, and if it is regarding a technicality why this whole thing has come out, the failure to submit a change of address, I think that should certainly be looked at separately from the other issues. Based on my experience as a tenant, I certainly think Ariann should be revived.

Mr. Chairman: Are there any questions? There are not. Thank you very much, sir. Rosemary Donnelly.

Ms. Donnelly: My name is Rosemary Donnelly. I am with Johnston and Daniel real estate. As a registered real estate person, I have sold quite a few co-ownership apartments at 580 Christie as well as other co-ops and co-ownership buildings around Toronto. One thing I would like to say is that the value of the units at 580 Christie has increased by at least 120 per cent since the owners went in there, since they were first offered for sale in 1986.

For my co-ownership clients who are in there who want to sell right now and take advantage of that equity and move on to homes—some of them are getting married and want children and they want someplace to have a garden to play in. Right now, they are stuck and cannot move until the refinancing is in place with the National Bank, and the National Bank will not give refinancing until Ariann has its charter reinstated. It is a bit of a catch-22.

Also, in my experience in dealing with Ariann, all the offers I have ever done with it have closed on time. There have never been any problems with them. So I am sort of on both sides: I have my clients who are the co-owners and I have also dealt with Ariann Developments. That is all I have to say.

Mr. Chairman: Are there any questions? Seeing none, thank you very much. Sheldon Kales.

Mr. Kales: My name is Mr. Kales. I own a share of Ariann Developments, specifically, apartment 402 at 580 Christie Street. I have never resided in apartment 402. I have it at this present time tenanted with renters. Their names are Joy and Ebenizer Ajayi. During the course of the last two years, while being the owner of this unit, I have never been contacted, other than financial arrangements about paying the rent, with reference to any complaints in the building, such as parking, heating or any other complaints for that matter.

My specific problem is that I am attempting to sell the unit now. As a result, I cannot do that until this charter is placed back in the hands of the company. Second, I have outstanding renovations to be done on the unit, and who am I going to go after? What company can I have do this? I made arrangements to pay for them and they are in contract and I would like to have them done, but in order for me to do that, I need someone to go after. I cannot do that unless the company is reinstated and hopefully as soon as possible.

I have purchased a house and I need the unit sold and I need the renovations done and I cannot wait any longer. My home closes in February 1989, and I would like this matter to be resolved as soon as possible.

Ms. Bryden: Would a one-week delay really seriously inconvenience your clients or yourself as an owner?

1110

Mr. Kales: A one-week delay? Other than the fact that I have to perhaps come back down and give evidence again since I have given evidence once, I do not know if I will have time next week to come back again if I am called upon to do so. It would be nice to have the matter resolved today and put it to rest. However, if the committee recommends that a one-week delay is necessary, then so be it.

Ms. Bryden: I think it would not be necessary for all the people who were here today to come back, but we could have a one-week delay—

Mr. Chairman: That would be up to the committee in the event that there was a delay granted. We can deal with that, I guess, at the end of the day. Are there any further questions? I see none. Thank you very much, sir. Next we have Edita Chylova.

Ms. Chylova: My name is Edita Chylova. I am the co-owner of 580 Christie. I would like to say that whatever was discussed today is only making me believe more greatly that Ariann Developments should be reinstated to move on with the issues that are now stalled.

Mr. Smith: As the last gentleman stated, if we need a week, so be it. Does it make any difference to you if the committee decides—and I have no idea what members are going to decide—it needs another week?



Ms. Chylova: For some people, a week can mean that they lose a good buyer.

Mr. Smith: It is that critical?

Ms. Chylova: It could be for some, yes.

Mr. Chairman: Thank you very much. Next we have Michael Even.

Mr. Even: My name is Michael Even. I am a business consultant. I do have to stress that I am not an owner of anything in Toronto. I do not own any condominium or house, nothing. I am a tenant.

I appear here because I advised Mrs. Logan before she bought these two buildings in question. One thing I have to say is that the buildings, especially 235 Grandravine Drive, were basically slums. More than 30 apartments were empty; the corridors were full of dirt. Definitely, there has been an extraordinary improvement. It was immediate, within a few months from the time Ariann Developments took over.

I also appear here as a former efficiency expert and taxpayer and I am a bit surprised that we have so many people here, members of parliament, who are dealing with things which should be dealt with by the small claims commission, for heaven's sake. It is a kind of inefficiency. If we will deal in such a way with every small issue, every tenant who has a complaint against some owner, I think that all the Legislature will have to sit down not to do anything.

I would like to ask Mr. Moscoe if, all the time, every one of the constituents, 100 per cent of the people, voted for him? And, at city hall, when a decision is taken, a decision much more important than this, the decision to approve a building downtown, which is extremely, extremely controversial, was it approved by 100 per cent of the councillors? We have a system of representation, for heaven's sake. What I am thinking is, definitely, you can ask for another week, and another week and another week. Maybe all the parliament will sit here to decide this. Really, as an efficiency expert in the past, this affair is a bit ridiculous.

I am telling you, frankly, the lady who asked for \$1,001, she has to make a claim in small claims court. It is just unbelievable that you are even listening to this affair. I would suggest only that the law has to be completely changed because you have here a technical contravention. So if you will decide that she has to pay, the company will have to pay \$1,000 for the contravention. It is fine in the future. But I am suggesting in the future you have to make a law which will make all this affair a bit more streamlined. Otherwise, it will be a kind of stranglehold, and for you, as MPPs, you have to deal with more important affairs, the basic Legislature. Okay, that is all.

Mr. Chairman: Any questions? Thank you very much, sir.

Mr. Moscoe: Is there an extra copy of this agreement?

Mr. Chairman: There is the one on the desk.

Mr. Keyes: Do you intend to recall the solicitors?

Mr. Chairman: Yes, I intend to recall the solicitors now. Please, Mr. Blott and Mr. Alexandor.

Mr. Alexandor: I would like to make just a few points in connection with some of the comments that have been made. First, the corporation for each building represents all the co-owners or shareholders in proportion to their proportionate interests in the property. That ownership includes Ariann Developments' interest, which is approximately, I understand, about 20 per cent in each building. The corporation does represent Ariann as well as all of the other owners.

It seems to me that it is in the interest of all of the individual owners, not only the ones who occupy the units for which they have an exclusive licence or occupancy right but including the ones who have leased to tenants, to have the building managed in as well and professional and efficient a manner as possible.

One of the essential provisions of the agreement is an undertaking by Mrs. Logan and Ariann Developments to operate and manage the business in a professional manner in accordance with a standard type of professional management agreement, and in so doing, to be accountable to the board of directors.

It seems to me that the interests of the tenants are well served by this agreement in so far as Ariann Developments has undertaken to be and will, under the agreement, be accountable to the board of directors for the efficient management. That covers items such as taxes, which I believe, incidentally, have been paid on both properties. It covers questions of any possible violation of parking requirements of the city of North York.

My understanding, from talking to the municipal officials, is that there is not a significant problem. It has to do with designation of existing visitors' parking spaces, but again, this is a matter in which the board of directors can, under this agreement, call upon Ariann Developments, as property manager, to take whatever action is necessary to rectify problems. If there are any other complaints with respect to maintenance, whether by tenants or co-owners, there is a forum now and a body that are recognized as having authority in the interests of all of the co-owners to make sure that the building is properly managed. I think in this regard the tenants will be well served by this agreement.

There are two other very small points. First, there is no application to convert the building to a condominium. With all due respect to Mr. Moscoe, I do not think it is a relevant consideration. No consideration has been given to it. There has been no discussion by the board of directors, to my knowledge. I have not been consulted about it. If that comes up down the road, then it comes up down the road. Of course, it is governed by the Rental Housing Protection Act and subject to the control of the municipality.

As far as tenants are concerned as regards their tenure, my understanding is that under current landlord and tenant legislation and judicial interpretations, tenants who were in the building at the time of the conversion are completely protected, and more so than they would be if the building were a condominium. So, on behalf of the corporation, I reiterate our request that the charter be reinstated. For the record, we oppose the request for a delay for one week.

1120

Mr. Chairman: Thank you, sir. Mr. Blott, do you have anything further to add?



Mr. Blott: Sir, just one piece of new information, and I must tie it into something that occurred last week in order to make it clear to this committee that I still believe it is imperative that you move forward today and that you move forward quickly to the House for second and third reading.

After last day's committee meeting, the Toronto Star picked up a headline that said, "\$49,000 Loan Abused in Condominium Deal, Lawyer Tells Hearing." Those of us who were present last day know very well that nothing of the sort was said to this committee. It took two correction notices, one last Saturday and one yesterday. The one in the Star yesterday said:

"Matter Did Not End Up in Court. A story on November 3 said incorrectly that provincial government lawyers had taken Ariann Developments Inc. to court in connection with a provincial loan made to the firm for rental units. The matter did not come up before the courts.

"The Star regrets the error."

Whoopee, because on Friday, the day after this inflammatory headline was in the paper, the second bank loan was frozen, the second bank account was frozen. This company now has no bank account.

Now, the same sort of statement that was made this morning verbally about condo conversions, about taxes, about tenants having the levers removed if you proceed today, is geared to catch this kind of inflammatory headline to further impair and impact the carrying on of this company, to the total disregard—I might add that there are 400 tenants out there who do not live in North York, who do not live in Toronto, who live in other municipalities in buildings owned by Ariann and are attempting to carry on in those buildings, and Ariann is attempting to carry on managing those buildings, attempting to carry on collecting rents and paying the mortgage.

How, I do not know. It is a desperate situation. We keep asking for a week. For what? There is no further issue to consider, with great respect. The issue is how fast this committee can get the reinstatement to the House and get this company reinstated so that it can get back into business and repair some of the damage that has been done this last six months.

Mr. Chairman: I am wondering, Mr. Alexandor, could you come back to the table in the event that there are questions? Do any of the members have questions? Seeing none, thank you very much. Mr. Keyes.

Mr. Keyes: The reason I refrained from any additional questions is that Mr. Alexandor basically answered the one I had. I respect the concern that some people have about some of the finer details, ethical and otherwise. As I said earlier, I am impressed with the speed with which some resolution of the problems has occurred. Keeping in mind the basic role of this committee and the last presenter of the public, who was concerned about the way our time was being used and what we are dealing with, I think perhaps he may not have a full understanding of the committee's operation and mandate, but yet a fairly good comprehension of it. Mindful of that role we play, I would like to move that we support Bill Pr66, proposed by the member for York Mills (Mr. J. B. Nixon).

Mr. Chairman: Mr. Keyes moves that the committee support Bill Pr66.

Ms. Bryden: I would like to move an amendment that the committee defer the decision on the application for revival of Ariann Developments for

one week. That is not completely contradictory. May speak to it briefly?

Mr. Chairman: I guess this would not be an amendment to the motion. It would be a new motion, because the first motion was to support the bill.

Ms. Bryden: Mine does not say not to support it. It just says to defer a decision on it.

Mr. Chairman: I do not think it is an amendment to Mr. Keyes's motion.

Ms. Bryden: Does the legal counsel agree? It seems to me that you can put a time on the consideration of the application, rather than just having a motion to accept it.

Mr. Chairman: All right. Thank you. I will treat it as a separate motion. With Mr. Keyes's permission, we will deal with it first.

Ms. Bryden: If that motion passes, I do not get an opportunity to put my motion.

Mr. Chairman: No. I would deal with your motion to defer first.

Ms. Bryden: Yes. That would be correct.

Mr. Keyes: If I may, I accept your ruling. I would be quite happy to see it accepted as an amendment. I do not agree with it but I could perhaps see it because in my opinion it is in order because it is not opposing the main content of my motion. It is time for a decision to be made on it. It is consideration of one week, which I do not support.

Mr. Chairman: Mr. Keyes, on the advice of counsel, the process in supporting the bill would be to vote for the bill on a clause-by-clause analysis. That being the case, I guess your motion to support the bill would probably would be out of order at this time. Therefore, the motion on the floor would be a motion by Ms. Bryden.

Ms. Bryden moves that the committee defer decision on the application for revival of Ariann Developments Inc. for one week.

Ms. Bryden: I would like, first of all, to say that there have been enough things that are still up in the air. Really, as a committee, I think we have a duty to give time for those to be resolved and to be sure that whatever decision we make is based on full information and up-to-date activities following the agreement.

Certainly, most of us have not had time to study the agreement, nor have we heard from the tenants as an association. I think the Legislature is very concerned that tenants' rights be considered as well as owners' rights. I think it would look as though the committee were putting owners' rights ahead of tenants' rights, because we did not know there was a tenants' association to invite until now.

I also have learned that the Ministry of Housing has written to Mr. Moscoe regarding the situation at 235 Grandravine Drive, saying that it has instructed Ontario Mortgage Corp. to commence proceedings to recall Ariann Developments' convert-to-rent loan. This confirms that there was an application for a convert-to-rent loan, but if the Ontario Mortgage Corp.



cannot lend money to Ariann, then presumably there is no money for a convert-to-rent situation unless the banks can put up additional money.

So it is very much up in the air as to whether they are going to recall—it says "to commence proceedings to recall Ariann Developments' convert-to-rent loan." In addition, the Minister of Housing says, "My ministry has requested the Ministry of Consumer and Commercial Relations to undertake a full investigation of any possible violations under the Residential Complex Sales Representation Act." There is that question too. Is the Ministry of Consumer and Commercial Relations interested in this question? Do they feel that we should revive Ariann Developments without contacting them and hearing what they may or may not find in such an act?

1130

The letter also points out that Ariann Developments is probably an isolated incident but that the co-ownership co-op which now owns the building was set up before the passage of the Rental Housing Protection Act in 1986. Therefore, it is not subject to the approval requirements set out in the act which were mentioned in the discussion here.

In other words, under the Rental Housing Protection Act, you cannot convert unless the municipality okays it. In this case, the municipality's okay is not necessary, but I think it still indicates that some other action under the Landlord and Tenant Act may be necessary. Therefore, I think we should also consult the Ministry of Housing on its attitude to the revival and whether it thinks it should be done immediately or whether these other things should be looked into first.

My motion is just asking for a one-week deferral which will give the committee breathing time to put it on the agenda next week, if time allows, and also to give everybody here the opportunity to submit additional material. I do think that if we do not give it one week's deferral, we will look as though we are really not concerned about the various matters that have been raised and that affect the Ministry of Housing, the Ministry of Consumer and Commercial Relations and all the tenants who are affected by their residential rents under the Residential Tenancies Act.

I do not think we as a committee want to go on record as not considering all those matters; not giving ourselves time to be informed about them. I think in one week hence the committee can look at the question again and decide whether it wishes to go any further on deferment or whether it wishes to consider the application.

Mr. Chairman: Ms. Bryden, just on a point of clarification, you were not here last week.

Ms. Bryden: No.

Mr. Chairman: Last week we did have representations made by the Ministry of Consumer and Commercial Relations and there is a representative here as well. They have no objection to the reviving of the charter. I know you were not here last week, but we did receive comments from a number of them. We have a solicitor here from the public trustee as well this morning and I understand that he is not opposed to the revival, so some of these matters have already been discussed and were discussed last week.

Ms. Bryden: I did try to get a copy of the Hansard.

Mr. Chairman: I just wanted to clarify that, because I know you were not here and I did not want you to be—

Ms. Bryden: I still think there are enough other arguments for a one-week deferral to look at these other points that have been raised, plus the fact that if the Ontario Mortgage Corp. has actually commenced proceedings to recall the convert-to-rent loan, it will affect the cash position. I presume they will not be able to get it back from Ariann Developments Inc. until they exist as a body. That is another complication that would affect the monetary situation after the event, and I think we have to look at that as well.

Mr. Ruprecht: Under normal circumstances, I would support my friend Howard Moscoe, because in North York he has always been known to fight for tenants' rights, and sometimes he has been fighting against a number of people—the establishment—even with one hand tied behind his back.

In this case, Howard, and in respect to you, Ms. Bryden, I have to join my friend Ken Keyes for a number of reasons why this should not be deferred.

First, we have to recognize that the charter is really in default only because of a technicality and that many of the side issues that were brought before this committee last week and this week are what I have termed side issues. They have no relevant impact on this committee. That does not mean all of them have no relevant impact, but most of them do not. There are other ways they should be impacted, namely, in the courts and in some cases the legislation of the Landlord and Tenant Act and others.

My second point is that as the chairman already mentioned, we have letters before this committee from the Ministry of Consumer and Commercial Relations and I think from the Ministry of Revenue that show there are absolutely no objections to the reinstatement of this company.

My third reason, which I mentioned briefly earlier, concerns the goodwill and the good faith shown by the owners and their solicitors. Some compromise was to be worked out. From what we hear today, there has been what I would term substantial progress made in this area.

My fourth reason, also a substantial one, is that we now hear from the solicitor that after the article appeared in the Star and after we had our first meeting last week, two bank accounts have now been frozen. This company is unable, as of this point, to function. Consequently, the whole commercial enterprise of Ariann Developments is impacted by this decision.

Finally, there are, as Ms. Bryden and Mr. Moscoe point out, a number of units in buildings that are outside the municipality. If we were to defer this for another week, we would not know what the impact would be on those tenants, and certainly the tenants would be affected by this decision. Consequently, I can only come to one conclusion; that is, not to favour the amendment by Ms. Bryden to postpone this decision for another week.

Mr. Sola: I am not going to repeat the arguments that have been made. I would just like to state that some of the side issues that are involved are important to the people involved, but they do not concern the committee. It is important that the committee stay within its mandate. I recall last year, Mr. Chairman, when I was sitting in your chair, replacing Mr. Fleet who was absent that day, we had a case with a mining company. We had a lot of substitute members on the committee and they all ignored George



McCague's sage advice and got involved in the side issues. We eventually had to reinstate the case and hear it all over again. I would not like to go into that embarrassing situation again.

I think we should stay within our mandate and handle the situation that is before us because, as the solicitor mentioned, there are 400 other tenants who are involved. Ms. Bryden said we should handle this next week, if time allows. In other words, you are putting a question mark on whether you will even look at it. The owner is being financially hindered by the fact that her corporation does not exist. The other tenants and owners are being affected by the fact that the corporation does not exist. I think we should stick to our mandate and go after the issue at hand.

Mr. Leone: I want to speak on this proposal because, after all, I am the representative; this is in my riding. I just discovered this morning—this is the first time I am sitting on this committee—a point I want to bring up. It is that probably in the protection of the tenants, we have to proceed with the mandate of this committee because the tenants are in a grave situation. If something happens, liabilities—I do not know; the lawyers are there. But we are dealing with a nonexistent company. If something happens in these buildings, tenants can really suffer something in liabilities. They cannot sue the owners and probably the insurance company will have claims that it is dealing with a nonexistent company. I am not a lawyer. Anyway, I want to say that we respect—probably the tenants have something to say. I will be ready also to work with the tenants if they have some representation to make to the owners. I will be ready to come and talk, but at this moment, I think we have a legal responsibility to reinstate this company.

1140

Mr. McCague: Mr. Chairman, you have been most patient in allowing everybody who has come before us to state his case. I think we have had a good discussion. Everybody has been given an opportunity to speak and I suggest the question be put.

Mr. Chairman: Ms. Bryden has asked for—

Ms. Bryden: Yes, I would like a minute or two of rebuttal, if I may. It seems to me outrageous that the committee is not willing to wait one week in order to clear up these matters and to give us time to read this agreement, because we have not had time to read it. We do not really know what it proposes or what matters it settles.

I think it is also outrageous that this committee is not prepared to recognize that the tenants involved have very serious problems with the operation of the building and with the owners. I think they should have an opportunity to put further comments in writing or whatever on how it will affect them. It would be very bad for this committee to appear not willing to listen to a very large segment of the affected population, namely, the tenants. For those two reasons, I would urge the committee members to support the one-week deferral.

Mr. Chairman: The question before you is that the committee defer a decision on the application for revival of Ariann Developments Inc. for one week. All those in favour? Those opposed?

Motion negatived.

Mr. Keyes: I move that we consider Bill Pr66 clause by clause.

Mr. Chairman: Thank you.

Section 1:

Mr. Chairman: Shall section 1 carry?

Ms. Bryden: I would like a recorded vote, please.

Ayes:

Keyes, Leone, Lipsett, McCague, Ruprecht, Smith, Sola.

Nays:

Bryden.

Ayes 7; nays 1.

Section 1 agreed to.

Mr. Chairman: Can I deal with the other two sections at the same time. Shall sections 2 and 3 carry? Same vote? Thank you.

Sections 2 and 3 agreed to.

Mr. Chairman: Shall the preamble carry? Same vote?

Preamble agreed to.

Mr. Chairman: Shall the title carry? Same vote?

Title agreed to.

Mr. Chairman: Shall the bill carry? Same vote?

Bill agreed to.

Mr. Chairman: Shall the bill be reported to the House? Same vote?

Bill ordered to be reported.

#### SUPPLEMENTARY BUDGET

Mr. Chairman: We have one more matter of business, which deals with the budget.

Members of the committee, could we proceed, please? We are going to deal with the supplementary budget that was handed out to you last week, I believe. Perhaps at this stage I could have the clerk outline the reasons this is necessary.

Clerk of the Committee: The reasons for the supplementary budget are explained in the explanatory note. What happened was that we put in a budget last year before we had decided on the report for the regulations in particular and that report turned out to be quite a bit larger than we anticipated. We ran out of money printing the report.



Mr. Chairman: Could I have some order, please.

Clerk of the Committee: At this stage, we are over budget by about \$50 and so this budget has been prepared to enable us to clear up the deficit on the printing of the reports. There is a good suggestion by researchers to the committee that we may have another regulations report out before the end of the fiscal year.

As well, I am hoping to get published an information circular on private bills that would be set out in a format similar to the standing orders in both English and French, so I have included money for this in the budget.

That is what we have before you.

Mr. Chairman: Are there any questions?

Mr. Keyes moves, seconded by Mr. Sola, approval of the request for supplementary budget in the amount of \$10,000 be sent to Management Board of Cabinet.

Motion agreed to.

The committee adjourned at 11:47 a.m.

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STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

SARNIA KIWANIS FOUNDATION INC. ACT  
KITCHENER-WATERLOO FOUNDATION ACT  
TAVONE ENTERPRISES LIMITED ACT

WEDNESDAY, NOVEMBER 16, 1988





STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

CHAIRMAN: Furlong, Allan W. (Durham Centre L)

VICE-CHAIRMAN: Lipsett, Ron (Grey L)

Keyes, Kenneth A. (Kingston and The Islands L)

Kormos, Peter (Welland-Thorold NDP)

Leone, Laureano (Downsview L)

McCague, George R. (Simcoe West PC)

Miclash, Frank (Kenora L)

Pollock, Jim (Hastings-Peterborough PC)

Reville, David (Riverdale NDP)

Smith, David W. (Lambton L)

Sola, John (Mississauga East L)

Substitutions:

Adams, Peter (Peterborough L) for Mr. Sola

Chiarelli, Robert (Ottawa West L) for Mr. Miclash

McGuigan, James F. (Essex-Kent L) for Mr. Leone

Also taking part:

Brandt, Andrew S. (Sarnia PC)

Haggerty, Ray, Parliamentary Assistant to the Minister of Consumer and  
Commercial Relations (Niagara South L)

Polsinelli, Claudio, Parliamentary Assistant to the Minister of Municipal  
Affairs (Yorkview L)

Clerk: Manikel, Tannis

Staff:

Klein, Susan, Legislative Counsel

Witnesses:

From the Kiwanis Foundation Inc.:

Cock, Doug, Executive Director

From the Ministry of Municipal Affairs:

Gray, Linda, Policy Analyst

From the Kitchener and Waterloo Community Foundation:

Bean, Walter, Honorary Chairman

From Tavone Enterprises Ltd.:

Swanick, Brent W., Solicitor; with Savage, Shnier and Swanick

From the Ministry of Consumer and Commercial Relations:

Levine, Katherine, Solicitor, Companies Branch

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Wednesday, November 16, 1988

The committee met at 10:10 a.m. in committee room 1.

SARNIA KIWANIS FOUNDATION INC. ACT

Consideration of Bill Pr18, An Act respecting the Sarnia Kiwanis Foundation Inc.

Mr. Chairman: I call the committee to order. The first item of business is Bill Pr18, An Act respecting the Sarnia Kiwanis Foundation Inc. Mr. Brandt.

Mr. Brandt: Thank you for this opportunity. I will try to be brief, knowing the committee has a heavy schedule. I would like to introduce Doug Cock from Sarnia, who is the executive director of the organization that is making the appeal to you this morning for certain tax relief, an organization known as the Lochiel Kiwanis Centre. The Lochiel Kiwanis Centre is in fact a charitable foundation operated by the Sarnia Kiwanis Foundation Inc. The title is the one you have before you, An Act respecting the Sarnia Kiwanis Foundation Inc.

I would like, if I could, to pass out to the committee members a brochure which outlines the work of the foundation, so that you will have some indication of the kind of thing it is involved with. If I may speak while those are being shared with the committee members, let me outline for you some of the facts behind the foundation itself. It started really from a typical intercity school that was no longer being used for that purpose and ultimately was taken over by the city. The city of Sarnia now owns and leases the building to the Sarnia Kiwanis Foundation, which in turn has a number of clients in the building, numbering about nine in all with a couple of part-time clients, all of which are nonprofit organizations.

The Sarnia Kiwanis Foundation does have a charitable number and is also a nonprofit organization. The brochure you have before you outlines the groups and organizations that are in the building at the present time. In addition, there are groups like Parents Without Partners and Alcoholics Anonymous. These organizations essentially serve the needs of the Sarnia-Lambton area. I am sorry Mr. Smith is not here this morning, because he would know this organization well, since virtually all the services that are mentioned extend out into Lambton county and certainly serve many of the constituents he serves.

Mr. Chairman: Mr. Smith has just arrived.

Mr. Brandt: Mr. Smith is here as I speak about him.

Mr. Smith: I hope it is all good.

Mr. Brandt: It was all good, sir, up until this point.

We anticipate, on a yearly average, that about 4,000 people are served by the Sarnia Kiwanis Foundation. Following the construction of an elevator which is going into the building, that number will probably increase to about



6,000. That elevator, of course, will be used for seniors and disabled people essentially. The foundation intends to purchase the building at some future point. The only reason they have not purchased the building at this particular juncture and why the city continues to own the building is that the city was in a position to take advantage of some senior government grants.

They have been reasonably successful, I might add, in acquiring those grants over the last while. They have been successful in getting a Wintario grant. They have an application for an Ontario neighbourhood improvement program grant now, which they anticipate will be successful, in the amount of some \$30,000. They received an access grant for seniors and disabled in the building for an amount of about \$50,000 and they received a substantial Canada Works grant in the amount of \$225,000.

Just as an aside, if I may say to the committee members, to show you the kind of responsibility this organization has, it actually returned \$9,000 to the government. They did not use all of the money and they completed the project with such success that they were able to give the government some of its money back. That is almost unheard of and, I think, gives you an indication of the—

Mr. Keyes: Good politics, though.

Mr. Brandt: Yes, whatever, it is. The gross yearly rent for the building averages about \$75,000 to \$80,000. The income from the building at the present time generates a very modest surplus. Over a three-year period, it would be in the range of \$12,000 or \$13,000. All of that money, without any exceptions, is returned to capital projects to assist with the continued development of the building. One of the projects that is on the board now that they are looking forward to completing is the parking lot, which is going to cost them in the order of \$60,000, of which \$30,000 will come from the Ontario neighbourhood improvement program, as I mentioned earlier.

What we are asking for is tax relief. This is a totally charitable project. There is no profit in it for anyone. The people who help to run the building are paid very modest sums. Doug, who is here with me today, is the executive director, as I mentioned, and he receives a modest salary, along with the secretary and I believe a third person.

Mr. Cock Janitorial.

Mr. Brandt: A janitorial person who cares for the buildings. So those are the three employees.

I would ask respectfully that the committee members consider our request. I understand that the government is not recommending that the project be approved on the basis of tax relief. I find that a little bit baffling—as I see heads wiggle back and forth—because here is an organization which is serving the community in a series of preventive programs that reduce the cost to government very substantially. It is exactly the type of thing that we, as parliamentarians, should be encouraging, not discouraging.

If you want to find ways to have volunteers come into the community and take some of the burden off the back of government, here is a classic example of an organization that has done exactly that, I say to the committee members and to the chairman.

So, with those brief comments, we will certainly respond to any

questions that you have. Doug, if there is anything I have missed, you may want to mention it.

Mr. Cock: I think you have covered it.

Mr. Brandt: I guess Doug says I have covered it, so we can move back to you, Mr. Chairman.

Mr. Chairman: Thank you, Mr. Brandt. Before we get into questions by committee members, perhaps we could hear from the representative from the Ministry of Municipal Affairs.

Mr. Polsinelli: Thank you, Mr. Chairman. I would like to thank Mr. Brandt for outlining the government position. Unfortunately, he is wrong at this time.

Mr. Adams: Nothing new about that.

Mr. Polsinelli: I would point out that we do have some comments to make on this application. The Ministry of Revenue has filed its standard objection that it has filed since 1977 on the basis that the ministry review has not been completed yet, and they have asked for a moratorium since 1977. However, notwithstanding that request from the Ministry of Revenue, the committee has been determining the application on its own merits.

The Ministry of Revenue also has concerns that the property is not owned by the applicant, and that is one of the conditions that this committee has established, one of the conditions that has evolved from this committee during a period of time, and that is one of the issues I would like to address in a few minutes.

Third, the Ministry of Revenue is also objecting to the bill's retroactivity. However, I would also like to point out that the committee has, notwithstanding retroactive measures in bills, approved similar types of bills in the past.

In terms of the ownership of the property, that is an element that has caused us some concern. As the committee is aware, generally one of the very stringent conditions that this committee has endorsed in the past is that the applicant own the property. It has been a condition that has, in a certain sense, been adhered to quite strongly by this committee. As such, we, as a government, had some concerns that this particular applicant did not own the property.

I would point out, however, that in this particular situation, we have obtained a copy of the lease of the property, and, notwithstanding that the applicant does not own the property, they have a clear right and option to purchase the property at a predetermined price.

I think it is important that I read into the record the provision of the lease outlining that option, and it is section 8(b) which says: That in the event the lessee wishes to obtain the ownership of the premises, the lessee, for as long as the lessee is actively involved at the centre, shall have the right, at any time following the 10th year of the lease term or during any agreed renewal term, to acquire the premises for the sum of \$100,000, less an amount equal to the sum of: (1) any moneys contributed from time to time from the lessee to the acquisition of the premises by the lessor, and (2) any



payments which shall have been made by the lessee to the lessor under paragraph 17 of this lease."

It seems to me, in our opinion, that goes a long way towards satisfying the question of the applicant owning and owing— Excuse me, what is the word?

Ms. Gray: Owning.

Mr. Polsinelli: Owning.

1020

Mr. Reville: It is Wednesday morning.

Mr. Polsinelli: It is Wednesday morning, right.

Mr. Brandt: It is 10:20, too.

Mr. Polsinelli: It is a second language, Mr. Brandt.

In any event, I think it is our position that that provision in the lease giving the applicant a clear and unequivocal right to purchase the property at a predetermined price but within a set period of time goes a long way towards satisfying the ownership requirement. That is our position. However, the committee is obviously going to have to discuss this and reach its own conclusion. Accordingly, as a government we have no objection to the application and we leave it in the committee's hands.

Mr. Reville: I have to make this speech, but it will be brief. It is my view, based on experience as a municipal councillor and as a person on a budget committee, that it is more appropriate to indicate public policy by direct grants rather than by waiver of assessment and taxation; that in fact this process creates a hidden shift of tax burden onto other ratepayers.

I think it is necessary to put this on the record. I can tell you, having looked very carefully at this kind of shift over a number of years, that it is significant, that there is no question that the number of tax-exempt properties, always for worthy causes, are increasing and that the foregone revenue therefore is made up by other taxpayers, whether they be commercial, industrial or residential.

Notwithstanding that, I am going to support this. I note in passing that I am a past national director of the Canadian Mental Health Association. I do not believe I have conflict of interest because you have a local branch operation there, but I do appreciate the work done by the many organizations which operate in your building and congratulate you and other volunteers on providing these necessary services.

Mr. Smith: I just want to ask another question of you, Andy, or Doug. Do the other service clubs in Sarnia have the same situation? Are they tax-exempt now on their properties? I can think of the Masons, the Odd Fellows, the Optimists, the Rotary, the Elks, maybe the Moose Lodge. Do those people get their tax exemption now? If we did go along with this, would we be setting a precedent that all these clubs then would come back to us in the same way with a private member's bill and say, "You did it for one, so do it for the rest." Can you comment on that?

Mr. Brandt: The Young Men's Christian Association is one example of

a tax-exempt building in the city. The other organizations you mentioned, such as the Lions, the Rotary and so forth, are not in a tax-exempt status. The buildings they operate are not providing the kinds of services outlined in the brochure which I passed around to the members of the committee. Very clearly, the Kiwanis Foundation is trying to provide a service to the community at the least possible cost. There is no direct benefit of any kind to the Kiwanis where there would be in a clubhouse that was owned by the Elks, the Moose Lodge or whatever, where the membership meets there on a regular basis and where effectively it is a social gathering place much of the time. This is not the type of building we have here.

I would have to say, having served for six years as mayor and four as a member of council in the city of Sarnia, that the only other example— Doug may know of others, having looked into this, but certainly the YMCA is one that does have a tax-exempt status. I do not know of any other service clubs which do, but their situation is entirely different, Mr. Smith.

Mr. Smith: Doug, would you like to—

Mr. Cock: To my knowledge, in the city of Sarnia there are no others. St. Thomas has a centre that is tax exempt now. In Windsor there is a centre there, the alcohol centre is a tax-exempt operation. Those are the examples we were able to find that did have this exemption. We felt we definitely were in the same category as they were in providing a service facility for the benefit of the community.

Mr. Smith: You do not believe, then, that we would be setting any precedent? With the type of building and project that you have here, it would not be the same as the other clubs or groups.

Mr. Cock: As Andy has pointed out, with most of the others, if they do have a property that they own where they hold their meetings, it is basically for the purpose of their meeting place. The percentage of the public using their buildings or their facilities would be much less. In our building, the whole area of the building is used by the public. We have our Kiwanis meetings there once a week, but the room that we have our meeting in is used by the community.

To give you an idea, each of the tenants in the building is able to use what we call our Kiwanis room for board meetings or seminars or whatever they wish, at no charge, twice a month. If they go over twice a month, then we charge them \$10 an hour. If an outside organization comes in—Parents without Partners is one, Alcoholics Anonymous is another—and there have been some of the community service organizations' executive and so on who have used the room at \$10 an hour, that does not even cover our costs.

The whole building is for the public. We are not saying that it is the Kiwanis centre, the Kiwanis building, and only a portion of it is used by the public. All of it is used by the public. There is no reservation or situation where we, as Kiwanians, say, "Hey, you can't use this part of the building, that's ours and ours only." The room that we use for our meetings is also used by the public.

In that sense, I do feel that the precedent you are referring to really would not be there unless they had their facilities used by the public as we do.



Mr. McCague: Mr. Brandt, why is the ownership in the name of the city?

Mr. Brandt: Only for purposes of being in a position to get grants, Mr. McCague. The city could apply for grants with senior levels of government somewhat more easily than the Kiwanis foundation at the time that this project was taken on. The city bought the property, obviously, from the board of education. It was a redundant inner-city school in the older part of the area. When it was made surplus to the needs of the board, the city bought it. The Kiwanis Foundation then moved in as the functioning operating administration.

It is the intent, as Mr. Polsinelli has pointed out, under a willing buyer-willing seller arrangement, to convert that to the foundation at the earliest opportunity. It is the intention, and I want to go on the record as saying this, that the foundation will buy the building under the terms outlined in the lease agreement. That is simply a bridge that has yet to be crossed, but it is fully the intent of the organization to do that.

The singular reason, I want to re-emphasize to all of you, that they, they being the foundation, left it in the hands of the city was to qualify for certain grants. The Canada Works program, Wintario and others were expedited as a direct result of the city being a partner in this operation during the early stages.

Mr. McCague: Probably on the advice of the mayor of the day, but that is—

Interjection: Who might that have been?

Mr. McCague: The second question, Mr. Brandt, is, are you a Kiwanian?

Mr. Brandt: Yes, I am.

Mr. McCague: I thought you graduated from that.

Mr. Brandt: If you are thinking of a conflict of interest, I have none, because it is a nonprofit—

Mr. Reville: We can do a kind of a service club fine on you.

Interjections.

Mr. Brandt: Yes, a modest sum would be in order. I might add that I am not a member of this Kiwanis club that is making the application, but I am a Kiwanian and have been since—

Mr. Reville: Nineteen eleven.

Mr. Brandt: —about 1962.

Mr. McCague: I thought there was an age limit on that.

Mr. Brandt: However, I do not receive any benefit from Kiwanis—

Mr. Reville: Yes, you do. You get to serve.

Mr. Brandt: —in the way of direct remunerative benefits I am speaking of.

Mr. McCague: I thought there was an age limit on that. Is that correct?

Mr. Brandt: Pardon?

Mr. McCague: An age limit on Kiwanis?

Interjection: No, sir.

Mr. McCague: No age limit, eh?

Mr. Brandt: Why would Doug and I be here if there was an age limit?

Mr. McCague: He is an employee and you are an advocate. That is all, Mr. Chairman.

1030

Mr. McGuigan: I do not have any questions but I want to declare a possible conflict of interest myself. I am not a Kiwanian; I am a Rotarian. But my father was one of the founding members of the Blenheim Kiwanis Club.

In 1966, I won a travel scholarship. Part of that was travelling in California at the expense of the government of California. I took my 17-year-old son along with me because I wanted to show him California agriculture, which we were studying.

Our host was a chap called Robert Stevens. We were in Sacramento, which is the capital city of California. He told us about his great-grandfather having been a British sea captain and coming around the end of South America and then coming up and establishing the city. His statue was in the park.

Robert Stevens told about his farm which is a 600-acre ranch in the Sacramento valley and about his sailing ship in which he took his family and sailed to Hawaii and up to the Aleutians every year and back. He told about his aeroplane and we began to think that he was from Texas and not from California.

The most interesting thing he told us was that he was one of the pilots of the group of planes that dropped the first atomic bomb. He saw the thing go off and he told us all about that. He was not the pilot of the Enola Gay but he was a pilot of one of the Pathfinder planes that preceded it.

On the last day there, he happened to notice—and this is where the Kiwanis comes in—that my son was wearing a Kiwanis key club in his lapel. He got talking about his ranch, and my son is very interested in fishing and hunting and so on, and he was telling us about the wonderful things out at his ranch. Finally, he said, "Would you like to spend the weekend with us?"

We jumped at the chance and he took us out along the Sacramento River. It was the spring of the year; the pear trees were in blossom. It was beautiful for me as a fruit grower. We came to this beautiful ranch that he had. He had the great big home and the aeroplane in the backyard. He had the picture of his sailing boat. So everything he had told us, I presume, was true and he really was from California and not from Texas. It was just a beautiful place, something like you see watching the extravaganzas on TV, something like Dallas really, although it was in California. We just had a beautiful weekend. He was a widower so he was all alone in this great big house.



So one of the most outstanding memories I have of travelling and having my son along with me was due to the Kiwanis Club. Incidentally, Bob Stevens told us he started the key club. We had a bit of trouble believing all of the things he told us until finally he proved to us that everything he said was true.

I have to have a bit of a conflict of interest. I would be inclined to vote for almost anything Kiwanis laid in front of us. Since the parliamentary assistant has indicated that he is very satisfied, I would have to cast my vote in spite of the conflict of interest that I might have.

Mr. Polsinelli: I just wanted to note for the record for those members who think that they may be in a conflict situation that this is not the Sarnia Kiwanis Club that is making the application but rather the Sarnia Kiwanis Foundation Inc., which is a separate entity, a nonprofit organization that has received its charitable number. It is a completely different organization. It may have the same board of directors and the same individuals running it, but it is a different organization.

Mr. Keyes: My own philosophy about tax-exempting structures, buildings, etc., is the same as that of Mr. Reville. Having served as mayor in the city that has the highest amount of non-tax-producing property in the whole province because of all our friendly institutions, etc., both federal and provincial, I was always of the impression that in order to let the taxpayer know to what extent you were assisting your community endeavours, it was always better to not have them tax exempt and provide grants.

That is just a matter of principle which I want to reiterate myself. Because of the comments made by the parliamentary assistant, I will certainly support it. But I do think that at some time we must look at it from a provincial level so that we can find a system of allowing what is intended by the act to exempt them from those appropriate portions of taxes that they should be exempt from, because of the work they do, and at the same time letting the general public know to the extent to which municipalities are supporting a number of these organizations.

Mr. Chairman: I will now put the question on Bill Pr18, An Act respecting the Sarnia Kiwanis Foundation Inc.

Sections 1 to 3, inclusive, agreed to.

Preamble agreed to.

Schedule agreed to.

Title agreed to

Bill ordered to be reported.

Mr. Chairman: Mr. McCague moves that the committee recommend that the fees, less the actual cost of printing, be remitted on Bill Pr18, An Act respecting the Sarnia Kiwanis Foundation Inc.

Motion agreed to.

KITCHENER-WATERLOO FOUNDATION ACT

Consideration of Bill Pr65, An Act respecting the Kitchener and Waterloo Community Foundation.

Mr. Chairman: Mr. Cooke is apparently tied up in serious traffic problems and is unable to be here. Mr. Keyes has agreed to substitute for him.

Mr. Keyes: What is before you is Bill Pr65, An Act respecting the Kitchener and Waterloo Community Foundation.

This particular act incorporates the Kitchener-Waterloo Community Foundation and provides for the number of directors to be composed of nine, three months after the incorporation of it in 1984. What they wish to do is to change the number of directors so it can be fixed within a maximum and a minimum number, as proposed by this bill.

I apologize for not having much advance warning on tending to this, as Mr. Cooke, as you said, is caught in traffic.

Mr. Chairman: The Minister of Consumer and Commercial Relations (Mr. Wrye) is represented by Mr. Haggerty. Do you have any comment on the bill?

Mr. Haggerty: No comments.

Mr. Chairman: There is no objection from the minister?

Mr. Haggerty: No objection.

Mr. Chairman: Mr. McCague moves that the question be put.

Mr. McGuigan: I would move that the committee recommend that the fees—

Mr. Chairman: Could you wait until after we have dealt with the vote, please?

The question is on Bill Pr65, An Act respecting the Kitchener and Waterloo Community Foundation.

Sections 1 to 3, inclusive, agreed to.

Preamble agreed to.

Title agreed to.

Bill ordered to be reported.

Mr. Chairman: Mr. McGuigan moves that the committee recommend that the fees, less the actual cost of printing, be remitted on Bill Pr65, An Act respecting the Kitchener and Waterloo Community Foundation.

Motion agreed to.

Mr. McCague: We should let the gentleman put his name on the record.



1040

Mr. Chairman: Could you put your name on the record?

Mr. Bean: I am Walter Bean. I am honorary chairman of the foundation.

Mr. Chairman: Fine. The record will show that you were present and the bill was dealt with.

Mr. Bean: I thought if the members of the committee wanted to make a donation, I would give you—

Mr. Chairman: You may pass your pamphlets around if you wish, but the bill will be reported to the House. Thank you for coming.

#### TAVONE ENTERPRISES LIMITED ACT

Consideration of Bill Pr63, An Act to revive Tavone Enterprises Limited.

Mr. Chairman: The next bill is Bill Pr63. Mr. Cooke was to be substituting for Ms. Collins, and Mr. Keyes will now substitute for Mr. Cooke.

Mr. Keyes: I am substituting for Mr. Cooke, who was substituting for Ms. Collins on Bill Pr63.

Mr. Chairman: Before you proceed, we have someone else here. Could he be identified for purposes of Hansard?

Mr. Swanick: I am Brent Swanick. I am the solicitor who acts for the currently defunct corporation. This is Mr. Tavone, who is the principal of the former corporation.

Mr. Keyes: I believe the purpose of this bill is to revive a corporation which had its charter cancelled due to failure to comply with the requirement of the Ministry of Consumer and Commercial Relations that it must inform that office of any change of address for the head office of the corporation. Notices that were sent out to have this done were not responded to, and therefore the failure to respond led to the cancellation of the certificate of incorporation.

When that notification did come out, it prompted action to have it revived, somewhat similar, I might say, to a number that come before this committee. We have expressed concern in the past as to how this might be looked after in the future, but perhaps the solicitor may want to speak to that, as to how steps will be taken to see that the same action does not occur again.

Mr. Chairman: Mr. Swanick, do you have any other remarks you would like to make at this time?

Mr. Swanick: Only that I was not acting for the corporation at the time this occurred. If any of the members wish an explanation as to why it occurred, I am prepared to give it.

Mr. Chairman: Before we do that, Mr. Haggerty, does the ministry have any objection?

Mr. Haggerty: I have been advised that the companies branch of the Ministry of Consumer and Commercial Relations and the corporations tax branch of the Ministry of Revenue have been consulted and neither of the said ministries objects to the private bill. I understand that form 1 has been filed with the ministry.

Mr. Reville: What is the business of this corporation?

Mr. Swanick: The corporation holds some reasonably valuable real estate.

Mr. McCague: What does "reasonably valuable" mean?

Mr. Swanick: I think that depends upon your perspective. In Toronto, you may find that it has value of some degree. I suspect if you are from outside of Toronto, you think it is worth a fortune.

Mr. McCague: Now, now, I live outside of Toronto and things are valuable out there too.

Mr. Swanick: It exceeds \$1 million.

Mr. McCague: I see.

Mr. Chairman: Are there any further questions?

Mr. McGuigan: I have a general one. What penalties, if any—and I am thinking of the cost of running through these bills—accrue to people who for some reason fail to carry out their responsibilities?

Mr. Chairman: I do not know that there is any penalty.

Mr. Swanick: If I can speak to that, I think I can give you an answer to that question. The penalty, if this bill does not pass, is that the property escheats to the crown. So the government owns this real estate.

The alternative to the passage of a private bill is to have the property conveyed by the public trustee to a newly constituted corporation. The effect of that, from a tax point of view, is that, in theory, the cancellation of the charter results in the disposition of the property, which triggers a requirement to pay federal and provincial tax on a substantial sum of money, and then life carries on when the company gets the property back.

If you are sitting here as members of the provincial parliament saying, "What does it cost us to approve this?" the trite answer is it costs you some tax, because from an income tax point of view—and I am a tax practitioner primarily—this mechanism saves my client a substantial sum of tax. It also saves his business a substantial disruption, because through the period of the last year, he thought his company existed. He carried on business as if it did exist. He entered various contracts. For him to find out after the fact that it did not exist, could have other serious negative business consequences to his company.

In terms of the penalties, the bottom line is that, either the government owns the property or my client has to pay tax, plus the business consequences that arise from it.



In terms of whose fault it is, I can only say that I have looked at the file and it is either the fault of my client, his former solicitor, or both. Whether my client chooses to take action on that issue is up to him.

Mr. McGuigan: That is a good explanation. I would not want to suggest that the government profits because of someone's inadvertence. I was just wondering, are any extra fees payable to the government to compensate for the extra work that it has to do in these cases.

Mr. Swanick: I think the clerk can speak to that issue.

Clerk of the Committee: We just have the regular fees that are filed on any private bill. There is a \$150 filing fee; the applicant must also pay for the printing of the bill, which in the case of a bill of this size would probably be \$600 to \$800; finally, there is advertising, which they must pay as well.

Mr. Chairman: In addition, Mr. McGuigan, they also pay hefty legal fees.

Mr. McGuigan: I thought that went without saying.

Mr. Swanick: I have no comment on that.

Mr. D. W. Smith: I think that my question has been answered, but I just could not believe how anybody with \$1 million worth of property could just let the title disappear or go, or how that would happen. It would almost seem like this committee has a lot of power resting on its decision here today. When you tell me what it is going to cost to get this title back, I think that a tip would be in order, but anyway, that is all I will say.

Mr. Keyes: A tip would be to buy land in Richmond Hill.

Mr. Swanick: I am sorry that I led the committee to recognize its immense power.

Mr. Chairman: Are there any further questions?

Mr. McGuigan: Yes, the question.

Mr. Polsinelli: I would think that Mr. Smith's comments were related not necessarily to a tip to individual members, but perhaps to the government—perhaps that the fees should be revisited by the Ministry of Consumer and Commercial Relations for a revival.

Mr. D. W. Smith: In a case such as this, there is a lot of money at stake.

Mr. Chairman: I understand that the fees have not been revisited for quite some time. Perhaps that is something that could be recommended at a later date.

Mr. Reville: It is another example of negligence on the part of this government, Mr. Smith.

Mr. Swanick: If I could make a comment, I think the woman from the ministry might speak to this. My understanding is that the penalties for

failure to file form 1s of the act are going to be substantially changed or already have been substantially changed. Is that correct or not?

Ms. Levine: We are hoping to have a statutory revival. We are hoping to amend our act.

Mr. Swanick: I see.

Interjections.

Mr. Adams: I do not agree with Mr. Reville's position nor Mr. Keyes's position about charitable organizations and tax-free exemption. Replying to Mr. Smith, the last decision will cost this government and other governments a great deal of money, too.

Mr. Reville: You have never had to run a city.

Mr. Adams: We can debate that. But it is a fact: The last decision will cost a lot of money.

Mr. Chairman: Order.

Mr. Adams: We are in order, Mr. Chairman.

Mr. McGuigan: Question.

Mr. Chairman: The bill is Bill Pr63, An Act to revive Tavone Enterprises Limited.

Sections 1 to 3, inclusive, agreed to.

Preamble agreed to.

Title agreed to.

Bill ordered to be reported.

Mr. Swanick: If I could just make a comment, Mr. Chairman, it seems to be the practice of this committee to remit fees, but I will not be making a request.

Mr. Chairman: I do not think you would get that motion through, sir. Thank you very much.

Mr. Swanick: Thank you, Mr. Chairman and members of the committee.

Mr. McCague: Our compliments to Mr. Keyes for handling it.

Mr. Chairman: Yes, Mr. Keyes did an excellent job.

Members of the committee, we will not be meeting next Wednesday, but will be meeting in two weeks' time.

The committee adjourned at 10:50 a.m.





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- 574

T-28

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

CHARLOTTE ELEANOR ENGLEHART HOSPITAL ACT  
CITY OF OTTAWA ACT  
LAPLANTE LITHOGRAPHING COMPANY LIMITED ACT

WEDNESDAY, NOVEMBER 30, 1988



STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

CHAIRMAN: Furlong, Allan W. (Durham Centre L)

VICE-CHAIRMAN: Lipsett, Ron (Grey L)

Keyes, Kenneth A. (Kingston and The Islands L)

Kormos, Peter (Welland-Thorold NDP)

Leone, Laureano (Downsview L)

McCague, George R. (Simcoe West PC)

Miclash, Frank (Kenora L)

Pollock, Jim (Hastings-Peterborough PC)

Reville, David (Riverdale NDP)

Smith, David W. (Lambton L)

Sola, John (Mississauga East L)

Also taking part:

Morin, Gilles E. (Carleton East L)

Smith, David W. (Lambton L)

Clerk: Manikel, Tannis

Staff:

Klein, Susan, Legislative Counsel

Witnesses:

From the Charlotte Eleanor Englehart Hospital:

Cimetta, Carlo, Solicitor; with Fleck, Sartor, Gray and Bruce

From the Ministry of Municipal Affairs:

Polsinelli, Claudio, Parliamentary Assistant to the Minister of Municipal Affairs (Yorkview L)

From the City of Ottawa:

Dronshek, Edythe M., Assistant City Solicitor

From LaPlante Lithographing Co. Ltd.:

Hopkins, Robert F., Solicitor; with Hopkins and Gopin

Gopin, Bernice, Solicitor; with Hopkins and Gopin

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Wednesday, November 30, 1988

The committee met at 10:11 a.m. in committee room 151.

Mr. Chairman: Good morning, ladies and gentlemen. I will call the committee meeting to order. I apologize for being late. I was caught up in traffic this morning. I understand that the representatives who are here for Bill Pr32 have not yet arrived, so we will move to item 2 which is Bill Pr9, An Act respecting the Charlotte Eleanor Englehart Hospital. The sponsors is David Smith. Mr. Smith, could you come forward with the delegation, please?

CHARLOTTE ELEANOR ENGLEHART HOSPITAL ACT

Consideration of Bill Pr9, An Act respecting the Charlotte Eleanor Englehart Hospital.

Mr. Smith: It is certainly a pleasure for me to be the sponsor of Bill Pr9. I have to say it is the first time that I have had this opportunity to sponsor one. I think this is quite a straightforward bill. I do not see too many problems with the Charlotte Eleanor Englehart Hospital group. Here today, we have the administrator, Barry Lockhart, on my far left, and Carlo Cimetta is the solicitor for the hospital.

I think the bill is trying to give the board a little more flexibility in determining the makeup of the membership of their board. If you want more technical detail of the bill, I think I will leave that up to Mr. Cimetta. I turn it back over to you.

Mr. Chairman: Mr. Cimetta, do you have some comments you would like to make at this time?

Mr. Cimetta: Perhaps by way of background, Mr. Smith touched on the primary purpose for making the application. Essentially, the reason for the application is twofold: firstly, to incorporate the Charlotte Eleanor Englehart Hospital, and secondly and probably primarily, to allow the board of trustees, by virtue of the incorporation, the flexibility to determine the composition of its membership.

As matters presently stand, the originating legislation in 1911, together with the amending legislation in 1970 with respect to the hospital, set out an itemized list of what people, both elected and ex officio, could be on the board of trustees. As an internal matter, the board had decided it wanted the medical director of the hospital to sit on the board of trustees. However, in light of the present legislation and the present scheme, this is not possible, short of amending the existing legislation again, which is what has led to this application.

Furthermore, the reasoning behind making the application was not only to amend the legislation at this time to achieve the specific end of allowing the medical director to sit on the board, but once and for all to incorporate the hospital, therefore and thereby allowing the board of trustees to amend its composition in the future by bylaw internally without having to make application for new or amending legislation every time a new member or a different member was to be appointed to the board.



Mr. Chairman: Fine, thank you. Prior to opening the issue up for questions, we do have a report from the commissioners of estate bills. I ask the clerk to read that report at this time.

Clerk of the Committee: This is a report received by the House from the commissioners of estate bills. The report reads:

"A hearing was held by the commissioners of estate bills on Tuesday, October 18, 1988, at 10:30 a.m., in the chambers of the Honourable Mr. Justice A. Goodman at Osgoode Hall, Toronto, Ontario, to consider and report with regard to Bill Pr9, being An Act respecting the Charlotte Eleanor Englehart Hospital.

"Notice of the hearing was duly served on the following persons: Canada Trust, executor of the estate of Charlotte Eleanor Englehart; Fleck, Sartor, Gray and Bruce, the solicitors for the hospital; the public trustee; municipal corporation of the town of Petrolia; Minister of Health for the province of Ontario.

"Solicitors for the public trustee and for the board of trustees of the Charlotte Eleanor Englehart Hospital attended at the hearing. No one appeared for the other parties served with notice of hearing.

"The commissioners are pleased to report that they recommend the following alterations to the bill prior to its passing:

"(1) That the preamble to the bill be amended by adding thereto after the words 'chapter 144 of the Statutes of Ontario, 1911,' the words 'as amended by An Act respecting the Charlotte Eleanor Englehart Hospital of the Town of Petrolia, being chapter 142 of the Statutes of Ontario, 1970.' This recommendation is made for the purposes of clarity and convenience having regard to the fact that the amending act dealt with the matter of the constitution of the board of trustees and one of the prime objectives of Bill Number Pr9 is a change in the manner of determining the constitution of the board.

"(2) That s.6(2) of the Bill be amended by deleting the words 'held, possessed or enjoyed' from lines 1 and 2 in the said subsection. This recommendation is made because we were told by the solicitor for the board of trustees that it is the intention to vest in the new corporation only such real and personal property that was actually owned by the hospital on the date of the passing of the bill. The subsection as presently worded might have the effect of depriving some person or corporation of property owned by them which is in the possession of or being held or enjoyed by the hospital on the day the act comes into force.

"(3) That the provisions of s.7 of the bill be deleted and be replaced by a provision to the effect that 'where the provisions of this act conflict with those contained in the acts referred to in the preamble, the provisions of this act shall prevail.'

"We do not suggest that this exact wording be used so long as the substituted wording used by the legislative draftsman carries out the intent indicated in the suggested amendment.

"We recommend this amendment as we are concerned that a repeal of the acts of 1911 and 1970, and in particular the act of 1911, might affect the rights and obligations of the Englehart estate, the town of Petrolia and the

hospital to an extent that is more than contemplated or necessary to carry out the intent and purpose of Bill Number Pr9.

"The parties who attended the hearing are in agreement with the above recommendations.

"Dated at Toronto, Ontario, this 18th day of October, 1988."

You will find copies of the amendments according to this report in front of you.

1020

Mr. Chairman: Mr. Cimetta, the report indicates that the applicants are consenting to these suggested amendments. Is that correct?

Mr. Cimetta: Yes, Mr. Chairman.

Mr. Lipsett: In light of the commissioner's report, then, I would like to make the following motions. In the preamble—

Mr. Chairman: Excuse me, Mr. Lipsett. There is a point of procedure here. I am told the proper procedure would be to move the amendments as we call the sections of the bill. As we hit each section, then we come back to you.

Mr. Polsinelli: I am pleased to report that the government has no objection to this bill proceeding, and I understand that the concerns of the commissioners of estate bills will be satisfied by the amendments, which will be tabled before the committee today.

Mr. Chairman: Are there any questions from the members of the committee?

Mr. Pollock: It is basically standard procedure that the medical officer of health in most hospitals is on the board of directors, is it not?

Mr. Chairman: Do you know that, Mr. Keyes?

Mr. Keyes: I believe it is only automatic if it is a 100-bed hospital or more. I believe this one is under 100 and that is one of the reasons there has to be a change made.

Mr. Pollock: I see. Fine.

Sections 1 to 5, inclusive, agreed to.

Section 6:

Mr. Chairman: Mr. Lipsett moves that subsection 6(2) of the bill be amended by striking out "held, possessed or enjoyed" in the first and second lines.

Motion agreed to.

Section 6, as amended, agreed to.

Section 7:



Mr. Chairman: Mr. Lipsett moves that section 7 of the bill be struck out and the following substituted therefor:

"Where there is a conflict between a provision of An Act to confirm the acceptance of the Charlotte Eleanor Englehart Hospital by the Town of Petrolia, being chapter 144 of the Statutes of Ontario, 1911, and a provision of this act, the provision of this act prevails."

Motion agreed to.

Section 7, as amended, agreed to.

Sections 8 and 9 agreed to.

Mr. Chairman: Mr. Lipsett moves that the preamble of the bill be amended by adding after "1911" in the fifth line, "that the said act be amended by the Statutes of Ontario, 1970, chapter 142."

Motion agreed to.

Preamble, as amended, agreed to.

Title agreed to.

Bill, as amended, ordered to be reported.

Mr. Chairman: Thank you very much.

The next bill we will be considering is Bill Pr6, An Act respecting the City of Ottawa. The sponsor is Mr. Morin. Mr. Morin, could you come forward with your delegation, please?

#### CITY OF OTTAWA ACT

Consideration of Bill Pr6, An Act respecting the City of Ottawa.

M. Morin: Bonjour Monsieur le Président, bonjour mes chers collègues de l'Assemblée législative de l'Ontario. I would like to introduce first Edythe Dronshek, who is the assistant solicitor for the city of Ottawa. Next is Diana McKone, the executive assistant at the Riverside Hospital of Ottawa, C. R. Simpson, who is the director of finance for the city of Ottawa, and Peter Carruthers, who is the president of the Ottawa Civic Hospital.

The proposed bill deals with three matters:

The revision of the act pertaining to the establishment and maintenance of the Riverside Hospital, revising the act to bring it into accord with current practice and legislation.

Section 2 would give licensed inspectors the power to require the production of a provincial driver's licence and vehicle permit when operating a vehicle not licensed by the municipality.

Section 3 relates to the Ottawa Civic Hospital. It proposes to increase the board of trustees from 17 trustees to 21 trustees. All of these matters are more specifically dealt with in the bill.

Mr. Chairman: Thank you, Mr. Morin. Would any other member of your delegation care to comment at this time?

Mrs. Dronshek: Basically, the Riverside Hospital is the most detailed section. It is revising and updating the old City of Ottawa Act, 1960-61. It is basically a housekeeping matter, cleaning up the legislation to make it realistically adhere to what present-day practices are.

It does a couple of extra little things. One is letting the executive director be a member of the board of trustees, and specifically allowing the hospital to acquire land and lease land outside of the city of Ottawa, but within the regional area of Ottawa-Carleton. In fact, the hospital is presently leasing land in the eastern end of Ottawa where it operates a clinic.

The licensing power is simply a matter of identifying drivers who are suspected of having unlicensed vehicles and it is an easier solution than the problem of requiring the police to come to the scene in order to identify the driver.

The third section is to increase the board of trustees for the Ottawa Civic Hospital. It is three additional people to be appointed by the council of the city of Ottawa. It is due to the large and expanding responsibilities of the hospital. It is desirable that they have more board members sit on committees and get into more community participation.

We have members here if you have any questions.

Mr. Chairman: Before opening the floor to questions, we will hear from Mr. Polsinelli, the parliamentary assistant to the Minister of Municipal Affairs.

Mr. Polsinelli: The Minister of Transportation (Mr. Fulton) has recommended an amendment to section 2 of the bill to clarify the powers that would be given to the inspectors working for the city of Ottawa. Subject to that amendment, the government has no objection to this bill proceeding.

Mr. Chairman: Are there questions from the members of the committee?

Section 1 agreed to.

Section 2:

Mr. Chairman: I understand section 2 is the proposed amendment.

1030

Mr. Keyes I have an amendment, Mr. Chairman, to subsection 2(1).

Mr. Chairman: Mr. Keyes moves that subsection 2(1) of the bill be struck out and the following substituted therefor:

"(1) The council of the corporation may pass bylaws requiring the driver of,

"(a) a cab or other vehicle used for hire or any class thereof;

"(b) a refreshment vehicle;

"(c) a driving school vehicle; or

"(d) any other class of vehicle that is regulated under a bylaw passed



by the council of the corporation for the licensing, regulating and governing of any trade, calling, business or occupation or of the person carrying on or engaged in it,

"to surrender for reasonable inspection, upon the demand of the chief licence inspector of the corporation or a licence appointed by bylaw, his or her driver's licence issued under section 18 of the Highway Traffic Act, or under the law of another jurisdiction and the permit for the vehicle issued under section 7 of the Highway Traffic Act or under the law of another jurisdiction."

Motion agreed to.

Section 2, as amended, agreed to.

Sections 3 to 6, inclusive, agreed to.

Preamble agreed to.

Title agreed to.

Bill, as amended, ordered to be reported.

Mr. Chairman: Thank you very much, Mr. Morin, ladies and gentlemen.

Is there anyone here representing Bill Pr32? Would you come forward please? Mr. Keyes, I understand you are going to be substituting for Mr. Velshi in sponsoring this bill?

#### LAPLANTE LITHOGRAPHING COMPANY LIMITED ACT

Consideration of Bill Pr32, An Act to revive LaPlante Lithographing Company Limited.

Mr. Keyes: Yes, Mr. Chairman, I wish to present Bill Pr32, An Act to revive LaPlante Lithographing Company Limited. I have here today Mr. Hopkins, Miss Gopin and Mr. LaPlante—Mr. Hopkins and Miss Gopin representing the firm of barristers and solicitors of Hopkins and Gopin, and Mr. LaPlante as the individual involved with LaPlante Lithographing Co. Ltd.

The understanding that I have of the necessity for this bill is somewhat similar to what we have had on other occasions, that there has been a lapse under the failure to comply with the Corporations Tax Act, and therefore the company was dissolved on December 20, 1982.

There is a desire now to revive the corporation so that it is able to preserve and pursue its interests in any assets that it may have and therefore, the necessity for special legislation, such as we have today, to revive the corporation. I will ask your forbearance for Mr. Hopkins or Miss Gopin to make representation.

Mr. Chairman: That is fine. Mr. Hopkins.

Mr. Hopkins: I have laryngitis, so I am going to ask my associate to make any remarks.

Mr. Chairman: Fine.

Miss Gopin: The corporation was dissolved as a result of the fact that notices that had been forwarded were not received by Mr. LaPlante, who was the president of the corporation at the time. The asset that he is seeking to preserve is the company in and of itself. He is a co-plaintiff in an action and, in order to avoid escheatment, it is necessary for the company to be revived for purposes of ensuring that status is maintained.

Mr. Chairman: Thank you. Prior to opening the floor to questions, Mr. Polsinelli, does the government have any response?

Mr. Polsinelli: Mr. Chairman, I have been advised by Mr. Haggerty, the parliamentary assistant to the Minister of Consumer and Commercial Relations (Mr. Wrye), that the government does not object to this bill proceeding.

Mr. Chairman: Thank you. Are there any questions from the members?

Sections 1 to 3, inclusive, agreed to.

Preamble agreed to.

Title agreed to.

Bill ordered to be reported.

Mr. Chairman: Ladies and gentlemen of the committee, that concludes our business for this morning. I have been advised by the clerk that there is only one bill before the House and that it would take very little time to do it. The suggestion at this stage is that we do not meet next Wednesday, but that we meet two weeks from today. Does anyone have a problem with that? Fine. Then we are adjourned until two weeks from today.

The committee adjourned at 10:36 a.m.





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Publication

T-29

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

GEORGE A. McNAMARA MEMORIAL FOUNDATION ACT  
CITY OF SAULT STE. MARIE ACT  
ORGANIZATION

WEDNESDAY, DECEMBER 14, 1988





STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

CHAIRMAN: Furlong, Allan W. (Durham Centre L)

VICE-CHAIRMAN: Lipsett, Ron (Grey L)

Keyes, Kenneth A. (Kingston and The Islands L)

Kormos, Peter (Welland-Thorold NDP)

Leone, Laureano (Downsview L)

McCague, George R. (Simcoe West PC)

Miclash, Frank (Kenora L)

Pollock, Jim (Hastings-Peterborough PC)

Reville, David (Riverdale NDP)

Smith, David W. (Lambton L)

Sola, John (Mississauga East L)

Substitution:

Hart, Christine E. (York East L) Mr. Smith

Also taking part:

Offer, Steven (Mississauga North L)

Morin-Strom, Karl E. (Sault Ste. Marie NDP)

Clerk: Manikel, Tannis

Staff:

Klein, Susan, Legislative Counsel

Witnesses:

From the George A. McNamara Memorial Foundation:

Nickerson, Mara L., Solicitor; with Osler, Hoskin and Harcourt

McNamara, Paul, President

From the City of Sault Ste. Marie:

Bottos, Lorie, City Solicitor

Redmond, Don, Commissioner of Engineering and Planning

From the Ministry of Municipal Affairs:

Polsinelli, Claudio, Parliamentary Assistant to the Minister of Municipal  
Affairs (Yorkview L)

Chipman, John G., General Counsel, Municipal Affairs

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Wednesday, December 14, 1988

The committee met at 10:10 a.m in committee room 1.

GEORGE A. McNAMARA MEMORIAL FOUNDATION ACT

Consideration of Bill Pr73, An Act to revive George A. McNamara Memorial Foundation.

Mr. Chairman: I call this committee meeting to order. Good morning, ladies and gentlemen. The first item on our agenda is Bill Pr73, An Act to revive George A. McNamara Memorial Foundation. Would the representatives please come forward. The bill is being sponsored by Mr. Offer. Mr. Offer, could you please identify the applicants?

Mr. Offer: To my immediate left is Mara Nickerson, solicitor for the George A. McNamara Memorial Foundation. To my extreme left is Paul McNamara, president. I understand that all filings with the companies branch and with the public trustee have been made in terms of this revival application.

Mr. Chairman: Would anyone like to make any comments at this time?

Ms. Nickerson: I do not think so, no.

Mr. Chairman: Do members of the committee have any questions to the applicants?

Mr. Keyes: Mr. Chairman, just one question, if you do not mind, for our edification in regard to the type of charitable institutions that are the recipients or benefactors in here. It is a philanthropic organization, but perhaps Mr. McNamara would be able to elaborate on some of our—

Mr. McNamara: By a bylaw of several years ago, possibly seven, we described our charitable gifting to point-of-contact charities; that is, charities like the Salvation Army, which was a very popular charity with my father, and Scott Mission halfway houses and street havens, exactly where, if I may use the term, the bread passes and the charity takes place. We do not gift to capital funding, to annual events, annual drives. We are a small foundation, but we do try to concentrate on where the real need passes from hand to hand.

Mr. Chairman: Any other questions? Fine. We are dealing with Bill Pr73, An Act to revive George A. McNamara Memorial Foundation.

Sections 1 to 3, inclusive, agreed to.

Preamble agreed to.

Title agreed to.

Bill ordered to be reported.

Fee-waiving motion agreed to.

Mr. Chairman: Thank you very much. The bill will be reported today.



Mr. Offer: Thank you, Mr. Chairman.

Mr. Chairman: Well done, Mr. Offer, as usual.

CITY OF SAULT STE. MARIE ACT

Consideration of Bill Pr75, An Act respecting the City of Sault Ste. Marie.

Mr. Chairman: The second bill that we have to deal with this morning is Bill Pr75, An Act respecting the City of Sault Ste. Marie. The sponsor is Karl Morin-Strom. Please come forward with your delegation.

Mr. Morin-Strom: Today, with me I have Lorie Bottos, to my immediate left, city solicitor for the city of Sault Ste. Marie, and Don Redmond, the city engineer for the city of Sault Ste. Marie.

As I understand it, this bill would give the city of Sault Ste. Marie the ability to purchase and acquire the ownership of Cherokee Disposals and Construction Ltd., enabling the city, through this share purchase, to acquire the landfill disposal site which Cherokee operates in the city of Sault Ste. Marie.

Mr. Chairman: Prior to turning the floor over to other members, perhaps Mr. Polsinelli could give us the government's position.

Mr. Polsinelli: The government has no objection to this bill proceeding.

Mr. Chairman: Do the applicants wish to make any further statements?

Mr. Bottos: Not really. I think the bill is fairly self-explanatory.

Mr. Chairman: Are there questions from members of the committee?

Mr. Keyes: I wonder if I might refresh my mind for the record because, from my municipal experience, it was my understanding that usually the Municipal Act allowed cities to do only those things that are spelled out in the Municipal Act. One of those does not spell out that a city can acquire shares. I noticed that written in the compendium and I did not have time to look at the particular case in question; Timmins, I believe it was. It was somewhere I read it. I am sorry. There was a case, the city of Timmins and the Ontario Municipal Board. I wonder if I might be very briefly refreshed as to that case, as to how that has created more or less the precedent that now something that the Municipal Act prohibits being done can be done.

Mr. Polsinelli: We have John Chipman, a solicitor from the Ministry of Municipal Affairs, who will be speaking to that.

Mr. Chipman: The case Mr. Keyes is referring to dealt with an almost identical fact situation where the city of Timmins sought to acquire shares in a corporation. They were alleging the authority under section 5 of the Municipal Act to acquire the shares. The Supreme Court determined that section 5 gave authority to municipalities to acquire land or other assets, such as buildings, structures and equipment, but did not give authority to acquire the shares of a corporation. It is for that reason that Sault Ste. Marie is here this morning seeking that specific authority.

Mr. Keyes: So the major basis on which we are granting this bill is the precedent of this particular case of the city of Timmins?

Mr. Chipman: The reason I presume that the city is here is that it is familiar with the Timmins decision and has concluded from that decision that it does not have the authority to acquire the shares and therefore is seeking explicit authority to be able to do so.

Mr. Reville: If I may, quite often at this committee you will see municipalities seeking enabling legislation to do that which they do not believe they can do under the Municipal Act. I think that is the case here. I think the city of Sault Ste. Marie is taking the appropriate course of action. There will be lots of occasions when that happens at this committee, when municipalities seek enabling legislation to do various things they want to implement in terms of public policy. I certainly have no objection to this.

Mr. Chairman: Does that satisfy you?

Mr. Keyes: That is fine. I merely wanted to ask the question and enlarge my own knowledge of the issue.

Mr. Chairman: Do other members have questions? Seeing none, this is Bill Pr 75, An Act respecting the city of Sault Ste. Marie.

Sections 1 to 5, inclusive, agreed to.

Preamble agreed to.

Title agreed to.

Bill ordered to be reported.

#### ORGANIZATION

Mr. Chairman: Before we adjourn, we have a small matter that the clerk would like to deal with and perhaps we could deal with that. It will take only a moment.

Clerk of the Committee: If I can have everyone's attention, we have had a few problems, particularly when the House is not sitting, where we have needed someone on the committee to sign the bills and the chairman and the vice-chairman have not been present. I have been asked to ask the committee to designate preferably a Metropolitan Toronto member to have signing authority when both the chairman and the vice-chairman are absent.

Mr. Reville: I elect Ms. Hart.

Clerk of the Committee: Christine is not a member of this committee; she is just substituting today. The two Metro members we have are Mr. Leone and Mr. Sola.

Mr. Chairman: Dr. Leone, would you like to be the signatory in that event?

Mr. Leone: Okay.

Mr. Chairman: Okay. Anybody else? Are we agreed?

Agreed to.

Mr. Chairman: Thank you. The committee is adjourned.

The committee adjourned at 10:20 a.m.





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T-30

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

OTTAWA CIVIL SERVICE RECREATIONAL ASSOCIATION ACT  
ASSOCIATION OF TRANSLATORS AND INTERPRETERS OF ONTARIO ACT  
LOI SUR L'ASSOCIATION DES TRADUCTEURS ET INTERPRETES DE L'ONTARIO  
STRATHROY MIDDLESEX GENERAL HOSPITAL ACT  
CITY OF TRENTON ACT  
PETERBOROUGH HISTORICAL SOCIETY ACT  
ORGANIZATION

WEDNESDAY, JANUARY 25, 1989





STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

CHAIRMAN: Furlong, Allan W. (Durham Centre L)

VICE-CHAIRMAN: Lipsett, Ron (Grey L)

Keyes, Kenneth A. (Kingston and The Islands L)

Kormos, Peter (Welland-Thorold NDP)

Leone, Laureano (Downsview L)

McCague, George R. (Simcoe West PC)

Miclash, Frank (Kenora L)

Pollock, Jim (Hastings-Peterborough PC)

Reville, David (Riverdale NDP)

Smith, David W. (Lambton L)

Sola, John (Mississauga East L)

Also taking part:

Chiarelli, Robert (Ottawa West L)

Fawcett, Joan M. (Northumberland L)

Offer, Steven (Mississauga North L)

Poirier, Jean (Prescott and Russell L)

Clerk: Manikel, Tannis

Staff:

Mifsud, Lucinda, Legislative Counsel

Witnesses:

From the Ottawa Civil Service Recreational Association:

Denison, W. Terrance, Solicitor; with Perley-Robertson, Panet, Hill and  
McDougall

Kolbusz, Virginia, Secretary, Board of Directors, Honorary Chairman  
Sheely, Gratton, General Manager

From the Association of Translators and Interpreters of Ontario/Association  
des traducteurs et interprètes de l'Ontario:

Fidler, Richard, Secretary

From the Strathroy Middlesex General Hospital:

Enright, Thomas, Hospital Administrator

From the City of Trenton:

Reynolds, Robert J., Solicitor; with Reynolds, Hunter  
Robertson, Neil, Mayor

From the Ministry of Municipal Affairs:

Chipman, John G., General Counsel, Municipal Affairs

Individual Presentation:

Bonn, George W., Solicitor

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Wednesday, January 25, 1989

The committee met at 10:14 a.m. in room 151.

Mr. Chairman: Good morning, ladies and gentlemen. We will call the standing committee on regulations and private bills to order. Just to give you an idea of the agenda this morning, the first bill we will be dealing with is Bill Pr4, An Act respecting The Ottawa Civil Service Recreational Association. The second bill will be Bill Pr36, An Act respecting Association des traducteurs et interprètes de l'Ontario—The Association of Translators and Interpreters of Ontario. We will then deal with Bill Pr80, An Act respecting Strathroy Middlesex General Hospital, and finally with Bill Pr40, An Act respecting the City of Trenton.

First I would like to extend an apology to those of you who appeared here last week and those who have travelled some distance to get here. We apologize for not being able to meet last week. I assure you it was not because we did not want to meet, but it was out of our control based on what was happening in the House. I am sorry that you had to make the trip last week, but welcome again to Queen's Park.

We will deal with the first item of business then. Bill Pr4 is being sponsored by Mr. Chiarelli.

OTTAWA CIVIL SERVICE RECREATIONAL ASSOCIATION ACT

Consideration of Bill Pr4, An Act respecting The Ottawa Civil Service Recreational Association.

Mr. Chiarelli: As the member for Ottawa West, I am pleased to be the sponsor of the Ottawa Civil Service Recreational Association Act. I would like to introduce three representatives on behalf of the recreational association, commonly referred to as the RA centre in Ottawa. We will be available for very brief submissions and we will also be available to answer any questions.

On my far right is Ms. Virginia Kolbusz, who is the secretary of the board of directors of the recreational association. To her left is Terrance Denison, who is counsel for the recreational association and on my immediate right is Gratton Sheely who is the general manager of the recreational association. I will ask Mr. Denison to make a few introductory remarks.

Mr. Denison: Thank you, Mr. Chiarelli. Mr. Chairman and members of the committee, this is actually the third time that we have been down before the committee, although we did not get a chance to address it last week, so we are glad to be here.

When we were before the committee with the original bill, there were a number of questions that were raised by the committee and the matter was deferred. We have brought it back now because we feel that we have responded to many of the questions that were raised about the bill in the original instance. In particular, we have secured a resolution of support for the bill from the Ottawa Board of Education and the regional municipality of Ottawa-Carleton. We also have a long-standing resolution of support from the city of Ottawa council.



The purpose of this bill is really to update an existing piece of legislation from 1961, which provides for a partial exemption from municipal taxes for the RA centre. The RA centre has changed in many respects since 1961 in that its facilities are larger and the original bill only identified certain portions of the original building for exemption.

There have been a number of meetings held with representatives of the city treasurer's office and the local assessor. Incidentally, Jetze Falkena from the Regional Assessment Office in Ottawa-Carleton is present in the event that there are questions about the assessment and the impacts of this bill or the bylaw that would come from the bill from city council.

Just to briefly remind the committee what the RA is, it is a nonprofit association incorporated under part III of the Corporations Act and originally started just after the Second World War by federal civil servants. The membership of the RA now is open to members of the public at large and there are approximately 45,000 members. That membership consists of individual members and family memberships.

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It is a fairly significant community activity in Ottawa. It is a recreational association which provides services to seniors, children and families. The facilities and the types of activities I can leave to someone else; perhaps Mr. Sheely or Ms. Kolbusz can explain if you have questions about those. We have brought with us some picture boards that show the building, which you will see is an older building in need of some work and repairs. There are pictures of some of the activities that go on at the centre and some of the participants.

The original bill, as drafted, probably needs some amendments, and in consultation with the staff of the ministry, there are some amendments we have looked at and would certainly agree to if a member of the committee wishes to move those amendments to the act. We are in agreement with those amendments. The amendments make it clear that the exemption being asked for here is a partial, not a total, exemption from assessment.

The reason that it is a partial exemption is twofold. First of all, we recognize that this is not a registered charity under the Income Tax Act of Canada, which is one of the usual criterion required when you pass such an exempting bill. However, usually in the case of an exempting bill such as that, the exemption is a total exemption.

What we are asking for here is not a total exemption; it is simply a bill to enable the city of Ottawa to determine the level of benefit that it feels it is obtaining from the activities of the RA and to set an exemption to offset that from time to time, without the necessity of having to come back to the Legislature for a new act every time there is a change.

The basis for the exemption is that it relates to cultural and recreational activities carried on at the facility, and negotiations take place with the city treasurer, the regional assessment office and the RA centre as to what is the proper level. At this point they are looking at an exemption which would be 50 per cent of the assessment.

The RA centre consists not only of a building, but also has about 30 acres attached to it. This land is used for playing fields, tennis courts and soccer and football fields. If these facilities were not available through the

RA, it is the feeling of the municipality that it would certainly have to provide those facilities to the public, and that is the basis for supporting the exemption.

Since I know you have heard much of this from me before and from the materials that I know you have all carefully perused, I will not say any more at this point unless there are questions. I would ask if Ms. Kolbusz could just run through some of the activities and community involvement the RA has.

Ms. Kolbusz: Thank you. I wanted to indicate to you as a follow-up to what Mr. Denison has said that the RA in Ottawa, as you may or may not know, is really an institution. People think of us as the sort of social and recreational institution in Ottawa, for the general public as well as the federal government.

As Mr. Denison pointed out, a large segment of our membership is family membership. The rest of it comes from all walks of government life. Although we are not registered as a charity, certainly we are viewed as being in many respects a charitable type of organization.

I have letters here for you which I can hand over from various segments of the community: from hospitals, from the Red Cross, where we hold blood donor clinics, from organizations for the disabled, various types of athletic organizations, muscular dystrophy and so forth. We are viewed generally as a part of the community and basically we do a lot of good works.

In regard to the types of activities of people who join the recreational association or people who have been with the RA, you will note over there that we have a very, very active seniors' club, and the seniors do not have just one club. In fact, in the Ottawa Citizen just last Sunday we had a profile on one of our most active members. There is a bridge club and I believe a chess club, cribbage and all kinds of athletic things as well for seniors.

We have dance classes. My children have been involved in classes with the RA for some time now. There are all types of things, not just dance classes. We have jujitsu and things of that nature. As well, even dogs get involved at the RA. We have terrific dog obedience classes there—they are renowned—and defence facilities over here.

The swimming pool is used constantly during the summertime, of course. It is iced over in the winter, but in the summertime the city of Ottawa runs programs out of there as well. There are a lot of activities, a lot of happy people because of the RA. I will leave these with you afterwards.

Mr. Chairman: Is that the presentation?

Mr. Denison: Yes. We would be glad to answer any questions.

Mr. Chairman: Before we get into questions, we will have the government's position with respect to this bill. Normally in this chair would be Claudio Polsinelli, the parliamentary assistant to the Minister of Municipal Affairs. Unfortunately, at the last moment he found he was unable to be here this morning, so he is going to be substituted for by the able Steve Offer, parliamentary assistant to the Attorney General.

Mr. Offer: It is a pleasure to be with this committee today. I served in this capacity a couple of years ago and it is nice to be back. I will see if I am able to say that at the end of the day, but certainly at the beginning of the day I can say that.



At first instance, there was an allusion made to certain amendments which are being proposed. These amendments do improve the bill, there is no question of that. However, I would like to indicate that three ministries have indicated objection to this bill. The three ministries that have indicated objection are the Ministry of Education, the Ministry of Revenue and the Ministry of Municipal Affairs.

The Ministry of Education and the Ministry of Revenue have indicated that they do not support the principle of exemption from taxation, the Ministry of Education certainly for educational purposes, and the Ministry of Revenue has indicated some concern in dealing with the whole question of the retroactivity.

I would think it is clear that the major difficulty rests with the Ministry of Municipal Affairs. I note that the Minister of Municipal Affairs wrote to the applicant in April 1988 and outlined the criteria that this particular committee has established to guide its policy review of such bills.

I think members of the committee will be well aware that there are and have been for many years four pillars, and those pillars upon which exemption is given are: (1) that there is ownership of the land; (2) that there is to be a resolution of support; (3) that the legislation provides for the local municipality or whatever to pass a bylaw granting exemption, as opposed to the bill itself containing an exemption; and (4)—and I think this is what we are going to have to grapple with—that the particular foundation or establishment has a charitable number.

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I think the members of the committee should not only be aware of the objections of the three ministries but also be very much aware of the objections, particularly of the Ministry of Municipal Affairs in its inability to support this application. Its inability is due to the failure of this organization to meet what it deems the most objective criterion for such exemption, that is, the lack of registered charitable status.

It is important to note that approval of this matter would set a precedent. We would be into a new area. We would be charting new ground that this committee has not charted before in terms of a precedent for other noncharitable organizations to apply. This would confront not only this committee but indeed the province with the necessity of conducting a thorough analysis of each organization that, while having a noncharitable purpose, does not have a charitable number.

If this were passed, we would be charged in this committee with the obligation or responsibility of considering such criteria as the nonprofit nature of the organization, the exclusivity of the organization and the access to service by the ratepayers of the community. This committee would then have to look into the nature of the target group for the service.

It would have to take a look at the existence of competitive commercial service providers who are not eligible for tax exemptions. It would have to take a look at the question of whether the organization is providing a service which a government would otherwise have to perform, and we would have to take a look at the precedents which would be established for other organizations which, if exempt, would weaken the municipal tax base.

Indeed, what we are talking about in this particular application is

setting a different and new agenda for exemptions of this nature, whereby one of the pillars for exemption, the charitable number, would no longer be necessary. To say that it is no longer necessary means to say that you now have three remaining pillars for tax exemption, but because you have taken away the necessity for a charitable number, you have in its place put an onus and a responsibility on this committee to get into a much greater analysis and investigation of the particular corporation or enterprise than ever before.

It is on that basis primarily that the Ministry of Municipal Affairs voices its objection to this application.

Mr. Chairman: Before getting into questions from the committee, Mr. Chiarelli, would you like to make comments on behalf of the presenters?

Mr. Chiarelli: I will try to be as brief as possible, knowing there are some time constraints.

First of all, off the top, I want to say that I respect the position and the policy of the ministry. I think they were clearly set forth in a very concise and understandable manner by Mr. Offer.

I gather from his comments that the chief objection would be that to grant it here would be setting a precedent. I would like to address that issue. In my opinion, it would not set a precedent, for the very reason that this particular recreational association came to the province and obtained an exemption for this very thing in 1961, I believe. The exemption was defined with respect to a portion of the building existing at that time.

Since that time, the recreational association built additional building facilities on to the original. Consequently, they were left with a hybrid situation whereby this Legislature had granted them tax exemption for a portion of the building, and yet an additional part of the building was not exempt. That is the reason this group is before the committee at this time, to make the tax exemption consistent.

I do not think we are breaking new ground. I do not think it would be setting a precedent. I respect the ministry's position that it wants to maintain credibility for its policy, but I do not believe that giving permission in this case will affect the credibility of the policy. There is, so to speak, a grandfathering provision here because they are already covered by an exemption of this type.

Second, with respect to the charitable status, as Mr. Denison indicated, we are not asking for the full exemption that would normally be given for a charitable association. As a nonprofit group, it is a partial exemption, and there is additional protection by reason of a bylaw provision, as indicated by Mr. Offer and Mr. Denison.

On that point, I would like to ask Mr. Denison to make a remark particularly on the retroactivity comment, and anything else that he might want to add.

Mr. Denison: Yes, thank you. I have had several discussions and correspondence with the ministry people. I appreciate the criteria, and we have tried to adhere to those criteria. I have explained how we adhere to them as much as possible. I think that really the only remaining issue is this charitable tax issue.

The question of retroactivity was raised. There is no retroactivity, in



fact, going to happen because of this bill. The city of Ottawa will have to pass a bylaw providing an exemption. I have been given the strongest assurances from the city of Ottawa treasurer that he has no intention of going back in budget years and granting any retroactive relief.

The bylaw, when passed, would speak from the day of its passing. When originally drafted, the bill provided that the bylaw could go to January 1987, but that related to the time when the bill was actually filed, and it was anticipated the bill would have been passed in 1987 and that the city of Ottawa would have dealt with an exemption bylaw in its then current budget year. So, I do not think there is a retroactivity question here. The bylaw will not be retroactive. The city of Ottawa told us it will simply not be retroactive. As you know, municipalities budget on a current basis; they do not go back and make those sorts of adjustments.

I think that in terms of the ministry's concern, you are going to be faced with a flood of applications like this where you are going to be determining these local situations all the time. I do not think you would want to do that and I do not think this committee would have the time to inquire into each and every one of those situations. That is why the bill would be implemented by the municipality through a bylaw. The municipality is certainly going to conduct the necessary tests to ensure that it feels it is getting a benefit for the tax relief it is granting the association.

The whole thesis of this relief granted here is that there are facilities and programs being provided that would otherwise have to be provided by the municipality. That is why they are willing to support the exemption.

Mr. Chairman: Thank you. Are there questions from members of the committee?

Mr. Keyes: There is one clarification that I would just ask Mr. Denison to confirm for the record. If you read the bill just in its original form that we had it, you might come to some of the conclusions presented by the Minister of Municipal Affairs (Mr. Eakins) on the basis that there could be, eventually, total exemption. My concern too was that since under the bill as originally printed, it suggested "the council of the corporation of the city of Ottawa may pass bylaws exempting the land...from taxes."

But they have proposed amendments, I understand, and members have them in front of them. The amendments help to clarify some of the concerns that I had; that is basically, now if we consider the amendment, they can only partially exempt the land. In addition to that, they have allowed themselves a restriction so that there can be no exemption granted in respect of land that is used for a commercial purpose.

With those two technical portions added to it, it helps us to get away from some of the concerns of setting precedents that Mr. Offer has eloquently placed before us. As we look at this and consider it, I think persons should be perhaps looking at the potential, what were considered as technical amendments but were, I think, very significant amendments to the bill as originally presented, which will help to preserve some of the assurances that this organization will not ever become totally exempt under this new bill. I feel it could have become exempt because of the way the original was worded.

Mr. Sola: I think when this matter came up originally, it was deferred on the basis of getting approval from the school board and the

region. I think that in order for this committee to be consistent with our previous conclusion, once this approval has been granted by those two bodies, we would have to be in support of this bill.

1040

Mr. Denison: Mr. Chairman, if I may contest that.

Mr. Chairman: Yes, Mr. Denison.

Mr. Denison: We have secured resolutions from the Ottawa boards of education and from the regional municipality of Ottawa-Carleton in support of these. I believe these have been filed with the clerk and have been circulated to you.

Mr. Chairman: They are available to the members. Are there any further questions?

Mr. Kormos: I am surprised at some of the comments made in opposition to it. I am referring to the transcript of the last attendance of these people here and those principles were talked about. It is strange. I am confident there is no precedent-setting here because the precedent has already been set; that is point one. Two, it is strange that government ministries would oppose a concept of local option when that seems to be inherent in so much of the sort of stuff they are trying to foist on the province now.

Mr. Offer: You are still not talking about this bill.

Mr. Kormos: In terms of a weaker tax base, it would seem to me that was affected in December 1988 when the Treasurer (Mr. R. F. Nixon) froze the unconditional grants to municipalities, Ottawa included.

Mr. Offer: My thought has been confirmed.

Mr. Kormos: The important thing is that, rather than talking about these principles, which were spoken of last time these people were here, the comments were made by my predecessor, Mel Swart, that the need was for legislation by way of regulation outlining the criteria to be met. Mr. Neumann at that time suggested that it was forthcoming. Mel said, "I've been hearing that for five years," and I guess now if there is to be some continuity, I can say I have been hearing that for six years.

That is the problem, that these regulations<sup>1</sup> which appear to have been promised, at least by Mr. Neumann, are not in place. These people cannot be criticized for the neglect of the government in that regard, but that seems to be the problem. Once those are there, then people who are applicants like these people will know what standards have to be met; these are legislative standards.

In the total scheme of things, though, in view of the weak arguments offered by the government—horribly weak arguments, hypocritical arguments offered by the government—I have no difficulty supporting it.

Mr. Chairman: Thank you, Mr. Kormos, for your eloquent comments.

Mr. McCague: I notice that the board of education approval was conditional on certain things happening. Have those things happened?

Mr. Denison: Yes. I believe we have a letter from one of the



administrators of the school board confirming that. In its letter of support, the school board wanted assurance that the recreational association would review its policies for fees for school-age children to ensure that fees for school groups not exceed a direct cost-recovery basis and that individual school-age children not be refused because of inability to meet fees.

Mr. Sheely has dealt with the school board on that issue and I believe he has a letter confirming that they are satisfied with that arrangement.

Mr. Chairman: Do you have that?

Mr. Sheely: I am checking to see if I have it in my file, but we do have a letter from the person who is the chief financial officer of the school board saying that the resolution passed by our board of directors does meet and satisfy its requirement.

Mr. McCague: Thank you. The second point is on section 2 of the bill, as printed, where it says, "A bylaw passed under section 1 may be retroactive to the first day of January, 1987." Would you propose that be changed to 1989?

Mr. Denison: I would have no problem with that at all.

Mr. McCague: That would be in keeping with what the city has already told you, would it?

Mr. Denison: Yes.

Mr. McCague: It might be wise, Mr. Chairman, to consider doing that.

Mr. Chairman: Thank you, Mr. McCague. Are there any other questions?

Not seeing any, we will deal with the bill. This is Bill Pr4, An Act respecting The Ottawa Civil Service Recreational Association. I understand that there is a proposed amendment to section 1.

Section 1:

Mr. Chairman: Mr. Keyes has moved an amendment as is printed. The members have it before them. He moves that subsection 1(1) of the bill be struck out and the following substituted therefor:

"(1) The council of the corporation of the City of Ottawa may pass by-laws partially exempting the land, as defined in the Assessment Act, being the land and premises described in the schedule, or any portion thereof, from taxes for municipal and school purposes, other than local improvement rates, so long as the exempted land is owned or leased by the association and occupied and used solely for a cultural or recreational purpose of the association that the council of the corporation of the city of Ottawa considers to be a benefit to the corporation of the city of Ottawa.

"(1a) No exemption shall be granted under subsection (1) in respect of land that is used for a commercial purpose, even if that commercial purpose has a cultural or recreational aspect to it."

Shall the amendment carry?

Motion agreed to.

Section 1, as amended, agreed to.

Section 2:

Mr. Chairman: I understand there now might be a suggested amendment to section 2.

Mr. McCague moves that section 2 of the bill be amended by striking out "1987" in the second line and inserting in lieu thereof "1989."

All those in favour of the amendment?

Motion agreed to.

Section 2, as amended, agreed to.

Sections 3 to 6, inclusive, agreed to.

Mr. Chairman: There is a suggested amendment to the preamble.

Mr. Keyes moves that the preamble to the bill be amended by inserting after the word "incorporated" in the third line "as a corporation without share capital."

Shall the amendment carry?

Motion agreed to.

Mr. Chairman: As a further amendment to the preamble Mr. Keyes moves that the 13th, 14th and 15th lines of the preamble of the bill be struck out and the following substituted therefor:

"that it is desirable that the real property and leasehold interests of the association be partially exempted from taxation for municipal and school purposes, other than local improvement rates, to the extent that the lands, premises and facilities are used for cultural or recreational purposes;"

Shall the amendment carry?

Preamble, as amended, agreed to.

Schedule agreed to.

Title agreed to.

Bill, as amended, ordered to be reported.

#### ASSOCIATION OF TRANSLATORS AND INTERPRETERS OF ONTARIO ACT

#### LOI SUR L'ASSOCIATION DES TRADUCTEURS ET INTERPRETES DE L'ONTARIO

Consideration of Bill Pr36, An Act respecting l'Association des traducteurs et interprètes de l'Ontario—The Association of Translators and Interpreters of Ontario.

Etude du projet de loi Pr36, Loi concernant l'Association des traducteurs et interprètes de l'Ontario—The Association of Translators and Interpreters of Ontario.



Mr. Chairman: The next item of business is Bill Pr36, An Act respecting l'Association des traducteurs et interprètes de l'Ontario—The Association of Translators and Interpreters of Ontario; Projet de loi Pr36, Loi concernant l'Association des traducteurs et interprètes de l'Ontario—The Association of Translators and Interpreters of Ontario. The sponsor is Jean Poirier. Welcome, Mr. Poirier. Please introduce the applicants.

1050

M. Poirier: J'ai l'honneur de vous présenter : à mon extrême droite, M. le professeur André Séguinot, qui est le président de l'ATIO; et à ma droite immédiate, M<sup>e</sup> Richard Fidler, qui est le secrétaire de l'ATIO.

J'aimerais commencer en demandant à M<sup>e</sup> Fidler de nous faire un bref historique de la présentation du projet de loi Pr36.

Mr. Fidler: The effect of the bill, and in particular of section 8, is to reserve the title of certified translator, interpreter or terminologist in Ontario to those members of the association who have been duly certified by the association as fully competent practitioners of the profession. The purpose of the bill essentially is to assist translation and interpretation clients and, more generally, the public in distinguishing those translators, interpreters and terminologists who are professionally qualified as such from those who are not.

The reserved-title or certification regime that would be established by the bill differs from a system of licensure or exclusive right to practise such as that which is enjoyed by doctors, lawyers, accountants and architects. A reserved-title regime does not prevent anyone from practising as a translator, interpreter or terminologist; it simply signals to the public that the holder of the title has achieved a legally recognized level of competence in the profession.

The immediate context for the bill is a translation market that in recent years, with the extension of bilingual services in Ontario and Canada and the considerable growth in international trade, has grown rapidly and become much more complex.

Until recently, the federal government played a very major role in training and qualifying translators and interpreters and it was by far the major client for the profession in Canada. This is less and less the case. The federal government, for example, has reduced its translation staff by about 50 per cent over the last few years and has increasingly been referring translation and interpretation needs to private firms and individuals, many of which have persons on their payroll or are using people who do not have the professional qualifications that we think are appropriate.

At the same time, the market for translation and interpretation in the private sector has increased dramatically, and this trend is of course expected to continue over the next few years. There is in fact a federal government survey, prepared for the Treasury Board and the Secretary of State of Canada, which predicts an increase over the next decade of about five to 10 per cent per year in the volume of translation and interpretation in Canada.

We have unregulated translation firms, some of which have dubious professional qualifications, which are setting up operations in Canada, encouraged in part by the growing internationalization of services and a less regulated trade environment.

The Association of Translators and Interpreters of Ontario is the only agency in Ontario that is broadly representative of the professional translators and interpreters and is actively striving to establish, maintain and monitor standards in the profession. It is the oldest association of translators and interpreters in Canada, indeed the world, I am told. It has a continuous history of almost 70 years' activity, going back to 1920.

Today, the ATIO has about 700 members, of whom close to 500 are certified members. Another 200 members are associate members, essentially candidates to become certified members. The majority of our members live in the cities of Ottawa and Toronto, in about equal numbers. The association publishes a quarterly newsletter, InformATIO. We hold seminars, including a two-day annual meeting or conference, with speakers on subjects of interest to the profession.

We conduct professional development courses, preparatory courses for our annual certification examinations. We circulate various publications to our members on the theory of translation and activities in the profession. We promote the profession by, among other things, presenting briefs to parliament and government agencies.

Together with our sister organization in Quebec, Société des traducteurs du Québec, we have participated on a number of occasions in negotiations with the federal government translation bureau and we have conducted other lobbying activities on behalf of the profession.

We provide a number of internal services to our members such as an insurance plan, circulation of employment offers and so on, and we publish annually a directory that makes known to the public, to those interested in using translation services, which of our members are specialized in particular language combinations, etc.

The association was a founding member in 1956 of what is now known as the Canadian Translators and Interpreters Council, the national umbrella organization of the seven associations of translators and interpreters in the provinces from New Brunswick to British Columbia.

Although I referred to a certain conjuncture in which there are considerable changes taking place in the industry of translation and interpretation in Canada, the idea of achieving professional recognition, in part through legislation, is not a new one with our association. As far back as the early 1960s, the Canadian Translators and Interpreters Council recommended that translators in Canada achieve professional recognition by means of legislation in their respective provinces.

There was an initial attempt made back in 1970 by the Association of Translators and Interpreters of Ontario, but it never went beyond first reading, I understand. One of the problems with the bill was that it was seeking a licensure regime, such as for doctors or lawyers. Among other things, the McRuer commission took a rather dim view of extending that kind of regime to other professional groups.

Just a word on how we certify members in the ATIO. We began administering competence examinations for admission to full certified or agréé membership status back in 1967. At first, we limited this process to translation to and from the official languages of the association, which are French and English. In 1970, we began certification examinations in other language combinations.



Since 1975, the various provincial associations in CTIC have delegated responsibility for the administration of a common certification examination in translation to the CTIC, although each provincial association continues to control admission to the examination and to membership.

We administer our own certification examination in conference interpretation, although we are now in the process, together with CTIC, of developing a common examination for conference interpreters and for court interpreters, court interpreters being a distinct subspecies of the interpretation profession.

In addition, we are in the process of eventually establishing a separate terminologist category such as the STQ in Quebec has.

All of this, of course, reflects the expansion of bilingual and multilingual services and the increasing maturity and complexity of the profession.

Only those members who have satisfied certain requirements of professional training and experience and who have successfully completed the certification examination may identify themselves as certified members. We do have other classes, as I referred to. There are associate members who are basically candidates for certification and then we have a few dozen students. We have some honorary members and we have retired members who are certified members no longer practising as translators or interpreters.

That is basically an overview, if you want, of the association and what it is attempting to do through this bill. I will stop at that point. Perhaps we can deal with the questions you have.

Mr. Chairman: Before hearing from members, we will ask the parliamentary assistant to the Attorney General for his comments.

Mr. Offer: Just briefly, there are no objections to this bill save for one amendment to the bill, which I understand is agreeable to both, in this case the Ministry of the Attorney General and the applicants, and which I understand will be moved by Mr. Sola.

1100

Mr. Chairman: This is Bill Pr36, An act respecting l'Association des traducteurs et interprètes de l'Ontario—the Association of Translators and Interpreters of Ontario; projet de loi Pr36, Loi concernant l'Association des traducteurs et interprètes de l'Ontario—The Association of Translators and Interpreters of Ontario.

Sections 1 to 7, inclusive, agreed to.

Les articles 1 à 7, inclusivement, sont adoptés.

Section/article 8:

Mr. Chairman: Mr. Sola moves that section 8 of the bill be amended by adding thereto the following subsection:

"(2a) Subsection (2) does not apply to a person accredited or certified by the Ministry of the Attorney General as a court interpreter."

M. Sola propose que l'article 8 soit modifié par adjonction du paragraphe suivant:

<(2) a) Le paragraphe (2) ne s'applique pas à une personne accréditée ou agréée comme interprète judiciaire par le ministère du Procureur général.>

Section 8, as amended, agreed to.

L'article 8, modifié, est adopté.

Sections 9 to 13, inclusive, agreed to.

Les articles 9 à 13, inclusivement, sont adoptés.

Preamble agreed to.

Le préambule est adopté.

Title agreed to.

Le titre est adopté.

Bill ordered to be reported.

Le projet de loi devra faire l'objet d'un rapport.

Mr. Poirier: I would just like to say that this is a historic moment in Ontario. It is the first time a private member's bill has been presented in both languages. You are now all sharing in that historic moment.

Mr. Offer: We are surely breaking new ground today.

#### STRATHROY MIDDLESEX GENERAL HOSPITAL ACT

Consideration of Bill Pr80, An Act respecting Strathroy Middlesex General Hospital.

Mr. Chairman: This bill was originally sponsored by Mr. Reycraft who, unfortunately, may be watching these proceedings from his hospital bed. We wish you well in any event, Doug, if you are watching. Mr. Offer has agreed to be here and to introduce the delegation on behalf of Mr. Reycraft.

Mr. Offer: I hope there is no objection from the members of the committee to my bringing this in the absence of Mr. Reycraft. Mr. Reycraft, as all members will know, suffered an emergency appendectomy. He had to have his appendix taken out on very short notice. Unfortunately, he is not here with us today, but I understand is recuperating well and should be coming back in the very next while and helping us with his abilities as the whip of our caucus.

With me this morning is Tom Enright, who is the executive director of the Strathroy Middlesex Hospital; D. J. Nywening, the mayor of Strathroy; and Pat Jones, treasurer.

The intent of this bill is to revise and modernize the legislation, which will allow for more flexibility in the appointment of the members of the hospital's board of governors and in the operation of the board.

Mr. Chairman: Are there any further representations to be made? Do you wish to comment at all on the bill?

Mr. Enright: I think Mr. Reycraft is doing very well. I think we



only get question period, but we have made provision for him to have the converter so he could watch you in the House.

Mr. Chairman: We wondered how sick he really was if he was watching this.

Mr. Offer: I have a feeling he was quite ill if he was watching this.

Mr. Sola: Is it a conflict of interest if Mr. Offer now offers rebuttals?

Mr. Offer: That is why I asked for the approval of the members.

Mr. Chairman: It is my understanding the government does not have an objection to this bill, so we will not hear from him a second time, Mr. Sola. How is that?

Sections 1 to 7, inclusive, agreed to.

Preamble agreed to.

Title agreed to.

Bill ordered to be reported.

Mr. Chairman: I wonder at this time if we could take a very short break? Sorry, Mrs. Fawcett, but Mr. O'Neil has indicated he would like to be here and I indicated I would let him know the time the bill is coming before the committee. Perhaps we could take a short, five-minute, break.

The committee recessed at 11:07 a.m.

1115

Mr. Chairman: The committee will reconvene. The next item on the agenda is Bill Pr40, An Act respecting the City of Trenton. Mrs. Fawcett, will you please introduce the applicant?

#### CITY OF TRENTON ACT

Consideration of Bill Pr40, An Act respecting the City of Trenton.

Mrs. Fawcett: I am introducing this bill today, An Act respecting the City of Trenton, because my colleague the member for Quinte, the Honourable Hugh O'Neil, Minister of Tourism and Recreation, is unable to do so due to his ministerial responsibilities. I introduce the bill for that reason and no other.

Having talked to my colleague Mr. O'Neil, I am of the understanding that he does not support the bill. I also understand that there is opposition to the bill in the city of Trenton. You were provided with an article with some of the details of the concerns of the minister and other people.

However, the government of Ontario affords groups such as the city of Trenton and those from the area that are concerned with the bill the opportunity to express their opinions through this committee on proposed bills. So I introduce the committee to Bob Reynolds and ask him to present the bill.

Mr. Reynolds: Let me give you first a tentative outline of this bill. The effect of the bill, in broad substance, is to abolish the Board of Park Management which is now in existence for Trenton and to transfer all of its assets, liabilities and functions back to the corporation of the city of Trenton itself, so that the parks operation will thenceforth continue as a regular department of the municipality, subject to all of the normal and standard administrative structures and under the direction of the elected municipal council.

Secondarily, the bill would correct a problem with the title to certain lands held by the parks board in the city. In the 1950s, and perhaps in the early 1960s as well, certain lands were taken by the parks board, at least some of them by way of gift, when under the provisions of the Public Parks Act they should have been taken to the city itself. As a result, there is a concern over the validity of those acquisitions by the parks board. Accordingly, the bill provides that lands acquired by the parks board in that way will be deemed to have been correctly acquired by the municipality, notwithstanding that possible error at the time of acquisition.

It has been mentioned in material which was delivered to you by the opponents, and will probably be mentioned again, that there is theoretically another way of doing this, of abolishing the parks board; namely, by having a plebiscite in Trenton under the Public Parks Act on that issue.

Our reason for choosing this route, the private bill route rather than the plebiscite, can be expressed relatively briefly. Over the past few years—in fact, I think I could safely say decades—the use of the plebiscite process, particularly at least in the municipal field, has largely fallen by the wayside as archaic and cumbersome and has been displaced by an increasing tendency to leave decisions such as these to elected representatives and to let those decisions be considered by the electorate at appropriate intervals. I gather that government policy in this area is indeed in the direction of having elected representatives decide and not in the direction of using the plebiscite function.

By way of example, over the years leading up to 1986 at least 14 other Ontario municipalities, ranging from Guelph, Barrie and so on through to Belleville in 1984, and there may have been others since, have requested and obtained from this committee or its predecessors and the Legislature private bills, in essentially the same or very similar terms to what you have before you, abolishing their parks boards. I am not aware—staff may be able to correct me—of any situation where the plebiscite process in the Public Parks Act was used to do that. The process universally adopted, as far as I know, is the one we are using, which is to present a private bill to you and the Legislature.

I note, by way of curiosity, that the last one, the Belleville bill in 1984—Belleville, as you know, being 10 miles down the road from us—with essentially the same substance as ours, was presented by Mr. O'Neil who at that time was not in difficulty, because he was not then a cabinet member as he is now.

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In any event, there is an established pattern of precedent, if I can call it that, of proceeding in the way that we have by presenting a private bill rather than going through the plebiscite process.



I think it is also worthwhile to give you some background on this matter in terms of how it comes to be here today. Initial instructions to seek passage of this private bill were given to me by Trenton city council in 1986. At that point, the bill quite simply had the effect of abolishing the parks board, transferring its assets to the city and fixing this title problem I have mentioned to you. In that respect it is, as I said before, very similar to the Belleville bill and others like it.

The response obtained from some individuals in the city, and some of them are here today in objection and have filed materials with you, was a concern that if this were done, if the park system were transferred back under jurisdiction of city council, city council might then act to dispose of park lands when that was not an appropriate thing to do.

In council's view at the time, that was of doubtful merit for a couple of reasons: first, many pieces of park land, particularly donations, are subject to a trust condition which limits their use to park land in any event and, second, it is rather clear that if council at any time in the past had really wanted to dispose of park land, it could have stacked the parks board over the years through its appointing power.

However, after some discussion council decided to deal with those concerns by making some amendments to the bill. Basically, they were as follows: first, a parks committee was to be established under the bill as a mandatory requirement—in other words, there would have to be a parks committee in the city—and park land could be sold or disposed of by the city only if both city council and the parks committee agreed with that on a vote; second, a public-notice-of-hearing process was established, so that before any park land could be disposed of the city would have to advertise that intention and give the opportunity to any concerned individuals to make representations to council about it.

The idea of establishing that independent committee with a veto power, if you like, was objected to by the Ministry of Municipal Affairs on the basis, and I think correctly so, that this would be to establish an independent appointed body having power over something that should be within the elected jurisdiction of council. Accordingly, after considering that ministry objection, we dropped that element of the bill. But we have retained the requirement that there be a parks committee which has parks issues as its sole purpose in life and presumably the airing of concerns regarding, for example, the disposal of park land. We have also kept in being the requirement that no park land can be disposed of without prior notice and an opportunity being afforded for public submissions to council.

I should add that, as far as I know, the bill is unique in giving that degree of protection to park lands and that degree of guaranteed participation by the public in any decision to dispose of park lands. To my knowledge, none of the other private bills gives any such protection. They simply abolish the parks board and transfer its assets to council.

That bill eventually made its way to a previous incarnation of this committee in June of this year. Mr. Bonn, representing a number of the opponents, was present and made a number of legal and policy objections to the bill, most broadly, I think I can say, that there was a fall election coming up in the municipality and that it was an issue that should be put before the municipal voters in that fall election rather than being decided here in June before that election.

The committee, in the end, did defer the matter, and that is why it comes back here today. I cannot purport to read that committee's mind, but I do think it fair to say that it saw some substance in the suggestion that perhaps it would be easier to defer what appeared to be a political issue of local concern until after the municipal election and see whether the mayor and council, who had sent me here in June, would still be in a position to send me here now, and what their instructions would be. As a result, the matter was deferred.

I can advise you that Mayor Neil Robertson, who is here today, was in fact re-elected by a two-to-one margin—I do not think he lost a poll—along with all of his incumbent councillors who chose to run; all but one, I gather. Subsequent to that election, a unanimous resolution of Trenton city council has sent me back here again, asking you to approve this private bill.

Further, I would note that Paul Tripp, who is one of the objectors and who is here today, opposed the mayor in that election and, as you can see from some of the materials which I filed with the clerk, made the parks board and its abolition and park lands an issue in the election, in which he obviously unsuccessfully ran against Mayor Robertson.

We are here again today asking you once more to approve the bill which has been asked for by this recently elected council of the city of Trenton. I should add by way of background that because this bill went back and forth between myself and the ministry a few times between 1986 and now, city council has probably voted about six times in favour of this private bill and the request for its enactment; in most cases, either five-to-one or, this last instance, unanimously.

There have been objections to the bill. If you have had an opportunity to review the material filed the last time, you will have a general idea about them. I do not propose to anticipate Mr. Bonn's comments in any detail, but I would like to make some broad points at this time.

First, with respect to all of Mr. Bonn's objections, which were of course made before the last committee hearing, some to do with the Charter of Rights and Freedoms and some to do with other legal arguments, I would note that the office of the legislative counsel and the Ministry of Municipal Affairs were engaged in extensive discussions with me about this bill in 1986, 1987 and 1988, and I believe had no significant difficulty with the bill in the form in which it finally made its way to you.

I would note that the representatives of the counsel office and the ministry were here at the previous committee meeting, heard all of Mr. Bonn's submissions in some considerable detail and later in that meeting, notwithstanding Mr. Bonn's submissions, were still of the view that they had no difficulty with the terms of the bill as presented. They were in fact able to say, as I recall, that the thrust of the bill, which was to transfer functions to the responsibility of the elected municipal council, was consistent with government policy in that regard. Beyond that, I suppose counsel has had the intervening months to consider the matter further, and as far as I am aware, the position in that regard is unchanged.

Second, with respect to the broad argument that was made the last time that the bill was undemocratic and should be left to the public in Trenton to decide, I would only say that very obviously the electorate in Trenton has now had an opportunity to consider the matter and has rather dramatically indicated its confidence in the present administration, Mayor Robertson and



council. It is pursuant to that mandate, very freshly given, that we are back here today.

It could fairly be said by now that it has come to the point where you have an elected council asking once more for the passage of a bill which is consistent with the general thrust of government policy and has been debated extensively by council and in a very recent campaign. It is being opposed by a number of individuals who I gather feel rather strongly about the matter, but there comes a time, in my submission, when the will of the municipality as a whole expressed through its duly elected representatives ought to be given consideration. In fact, to deny passage of this bill would go a very long way towards giving primacy to the views of a few individuals over the duly expressed will of the electorate of the municipality as a whole.

Having made those general comments, I am open of course, to any questions the committee might have.

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Mr. Chairman: Thank you, Mr. Reynolds. Before we open the floor to questions, perhaps we could have Mr. Offer state the government's position.

Mr. Offer: First, let me indicate that I have been informed by officials from the Ministry of Municipal Affairs that there is some considerable precedent for private legislation permitting the dissolution of local park boards in favour of the direct council delivery of park services.

I am advised that Sudbury in 1966, Guelph in 1971, Waterloo in 1971, Brantford and Strathroy in 1982 and Belleville in 1984 all acquired private legislation dissolving the local parks boards in favour of the direct council delivery of the service. It is the recommendation by the Ministry of Municipal Affairs that this bill be supported. It is their thought that the changes should result in an improved accountability for the parks function to the electorate of the city of Trenton. Those are my comments.

Mr. Kormos: I am concerned, and I know Mrs. Grier, who was here last time you were here, was concerned as well, with your comments about plebiscite, particularly when there was a municipal election. One of the arguments that might be made is that it is an expensive procedure, and undoubtedly it is, but in view of the fact that there was a municipal election in the fall of 1988, that this issue, as you say, was born as long ago as 1986, that you were here in June of last year with more than sufficient time before the fall election, when you heard the comments of, among others, Mrs. Grier, why would the council not have given the community what the legislation provides for the community and added that to the municipal ballot in the fall of 1988?

Expense would have been minimal. You are suggesting that utilization of plebiscite is some type of abdication of responsibility. Surely there would be no fear of that criticism that they were merely abdicating their responsibility. On the contrary, they were in the most frugal manner giving effect to the legislation that is in effect, which the community is obviously well aware of, because it is a strong part of, among others, Mr. Bonn's submissions. So simply done.

I am astounded that would not have been utilized in view of the obvious public opposition to the move with respect to this bill. You comment that plebiscite seems to be outdated. The fact is that it was an ideal time to

utilize it. The legislation provides for it. What is the rationale for that? How can that be substantiated?

Mr. Reynolds: The thrust, at least what I took from what the last committee said, was that there was a ready opportunity for the issue to be aired at the local level in the election, and we availed ourselves of that opportunity. There are obviously two choices about how that could be done. One would be to adopt the route suggested by Mr. Bonn and actually have a plebiscite. The other would be for Mayor Robertson to take responsibility for the issue in the campaign and include that as part of his platform and invite opposition to his re-election on that issue, and that is what he did.

The reason for the choice comes back, I suppose, to our basic belief, which I think is consistent with the long-term thrust of government policy, that rather than adopting the direct plebiscite route, it is better for elected representatives to come forth and say: "That is my position. I am responsible for that position, and I'm going to run on that position. You can vote for me or not on that basis."

In my respectful submission, that was the more direct and the more courageous way to do it, and that is what Mayor Robertson did. Very clearly, he had opposition, Mr. Tripp, who raised that very issue and was soundly defeated. I do not think it is fair to say that there was some effort to avoid the situation or to avoid a plebiscite. It was our feeling that in this day and age it is a more appropriate exercise of the democratic process that the elected representative step forward, take responsibility and let the electorate decide, and that is what happened.

Mr. Kormos: Obviously, the need for a plebiscite or a referendum approach is to protect the interests of the community. In view of the legislation that exists, is the community not entitled to utilize that protection? Is the community not entitled to that?

Mr. Reynolds: I guess the answer is that historically that is one of the mechanisms that has been available for the expression of the will of the electorate, the other being through its elected representatives. It is my simple response that over the years it has become preferable, and I think it is generally recognized as preferable, that it express its views through the election process and through the election or defeat of its representatives. It is not a situation where the electorate was denied its choice. It was given a very clear choice by Mayor Robertson and it chose to re-elect him by a very substantial margin over an opponent who opposed this bill.

Mr. Keyes: I must follow along the same line of questioning and disagree with Mr. Reynolds fairly extensively over the face he puts upon the issue of public support for the incumbent. Elections at a municipal level, in my opinion, are decided primarily on far more than just a one-issue basis. The electorate usually evaluates the performance of an individual in a lot of areas and therefore will quite often express its support for an individual in appreciation of the outstanding leadership that has been given through many assets and many other factors of the leadership over a period of years, as opposed to perhaps supporting an individual who runs on a one-ticket item.

If I want to use an example, I will refer to our own city of Kingston where we have just finished an election and a plebiscite was held, so they are not all that outdated. It was on the issue of who would operate the bus



system. Should the public utilities commission operate it as it has for the last 25 or 30 years, or should it be turned over to a committee of council?

It was a hotly contested issue by the public and rightfully, in my opinion, the people on council running as mayor did not take strong views on it because they were going to be sitting on council or commission, either one. They rather let the people decide. It was a fairly close vote. The status quo was maintained and the plebiscite said the PUC will continue to run the bus system.

Unfortunately, I think this committee is being used in a sense, if I can put it bluntly, as being the scapegoat in this process, by trying to put on to us the decision to decide a highly politicized issue in the city of Trenton, and I do not appreciate being put in that position.

I was not here as a member before; some of the people who were here were. I am in the same position as Mr. Kormos. They delayed it in June. To me, that was an ideal time for either the incumbent members of council, in their own wisdom, to consider it as an issue for the ballot, which would have been a minimal expense, or at the same time, it behooved those who were in opposition to have presented, which is their right, a petition asking that it be placed on the ballot. Frankly, in my opinion, the opportunity was there and it was missed by both sides. The protection is certainly there. I am disappointed in that, but I am disappointed that we are being asked to decide such an issue on which there is strong support.

It is also mentioned by Mr. Reynolds—correct me if I am wrong, sir, but I think you said there was now unanimous support by city council that the issue be sent back here, yet we find two letters from current aldermen who oppose the action, and this even though, as one person has indicated, they voted but did not realize the significance of the vote, it having happened very shortly after their being sworn in. There is not, according to the information before us today, unanimous support on the council of Trenton that such should be done.

While I have reserved comments until later as to my particular position, I am somewhat disappointed. Again, I would say the success of Mr. Robertson, which I commend and congratulate, I am sure is based on a wide variety of issues. While people may not have supported him in his stand of taking over the parks operation by the city, they would have evaluated his ability on many other criteria rather than a single one.

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Mr. Chairman: Would you like to comment on that?

Mr. Reynolds: Very briefly, if I can. Obviously, you are right in the sense that any candidate is re-elected or defeated not just on one issue, but on many. On the other hand, it has become, I believe I can fairly say, an accepted, recognized and desirable part of our political process that this is the case, that people are not elected or defeated on one issue, but on their responsibility to the electorate on a range of issues.

However, having said that, the mandate given to an elected representative cannot be picked apart in that way. I do not think it is open to us to say, "You got elected, but not really on that." The process of elected responsibility is going to break down if we open up elected representatives to a suggestion of, "I elected you for that, but not for

that." In my submission, that is not consistent with the way our system is supposed to work.

The other point is that I have some sympathy for the feeling you are being handed a hot potato because council did not want to decide. However, in my submission, that is not really a completely correct characterization. In so far as it was within their power to do so, by passing the resolution requesting this bill, Mayor Robertson and the local council have acted and have taken the responsibility for that action.

You are entitled, in my submission, to accept the request of council as the expression through the electoral process of the will of the municipality. You are not required to go behind it. In my submission, it would be an unfortunate situation if you did go behind it. The will of the elected majority has spoken.

In that connection it was mentioned that this is a major political issue. There is no evidence of that. What evidence you do have is that the mayor and council were elected after an election in which this was an issue, in the mayor's case by a very substantial margin, and that a few people have filed objections and a few people are here. I see no evidence that there is some sort of major political ground swell in the city of Trenton against the position presented to you by the city's duly elected representatives.

Last, in terms of just generally the merits of doing it this way as opposed to a referendum, as was mentioned, there have been at least 14 other bills of this nature, most recently in 1984, sponsored by Mr. O'Neil a few miles down the road in Belleville. I hardly think all of that precedent would have accumulated if there were a valid perception that enacting these bills was somehow letting local municipalities abdicate their responsibilities. I do not think the people who presented those bills would have done it in that situation.

Mr. McCague: The points I wanted to raise were much the same as those raised by my two colleagues here. It is very difficult to have a one-issue election, as you have mentioned. It appears to me that on the one side you had a person who addressed a wide variety of issues, and on the other side you may have had a person who addressed a very narrow group of issues, one being the park land, on which you felt very strongly. Therefore, I could argue—not being a lawyer, not as well as you could—that because it was one issue on one side in a lot of respects, the end result was not truly indicative of how the people felt on the parks issue.

Mr. Reynolds: I suppose the answer is that there is not any evidence of that. I think I can safely say that what you have here is the bill being presented by, again, duly elected council. On the other side, you have what I think I can fairly characterize as a special interest group. There is no evidence to indicate that interest group represents more than the interests of a few individuals; not a shred to my knowledge. Certainly, the voting patterns do not suggest it was a major issue on which this opposition found support among many others.

Surely if we are put in a position where the elected representatives are coming to you and saying, "This is our will," on behalf of the municipality as a whole, and there is opposition from a few individuals that is not shown to represent more than a few individuals, in my submission it becomes the most undemocratic exercise of all if this committee and the Legislature in effect defer to the special interest group, which has no evidence of support by



anything more than a small group. If that happens, then the primacy of that indefinite special interest group over the will of the elected majority becomes rather clear and rather unfortunate.

Mr. McCague: What you are saying is perfectly understandable. On the other hand, the group that is bringing other things to your attention seems to have some fairly valid points from a historic perspective. They have done a great job of putting before us a public decision on the fate of the Board of Park Management. Somebody must have persuaded the editor it was a good idea to put it to a vote. It seemed a good idea to the editor. I guess those are the two main ones.

I think it puts the committee in a very difficult position to try to decide what is a political issue when I suggest the city had the opportunity to put the question before the electorate very distinctly and clearly and get that opinion in November 1988. It is a difficult issue. I do not profess to know both sides of it at all. I just know what has been presented here to us.

Mr. Reynolds: I suppose my only response is that it gets to be a bit of a frightening proposition if the very concrete expression of the views of the democratically elected council are not accepted because of the expressions of individuals, of editorial writers or whatever. That is one of the dangers, it seems to me, of the single-issue argument.

Mr. McCague: I am democratically elected too, but I do not always get my way with Mr. Keyes.

Mr. Reynolds: Oh, I am sure.

Again, there is a bit of a philosophical act. Obviously, I am not privy to all of the undercurrents, political and otherwise, but in my submission, in a very broad sense, divorced from the particulars of this precise issue, it will be unfortunate for the process in a larger sense if this committee feels bound to ignore what the elected councils come to it with and in effect abandons that in favour of the views of an interest group. I think that is an unfortunate development for the process as a whole.

If you cannot accept the expression of such a recently elected council as expressing the desires of the municipality as a whole, you have to really wonder what the system is all about.

Mr. McCague: I hear what you are saying, but I do not think you could accuse a committee such as this of abandoning the wishes of a council when there is another avenue open to you.

Mr. Reynolds: The difficulty with that—you have already heard them; I am not going to belabour my comments as to the desirability of using that other avenue, the single-issue plebiscite. In my submission, it is not a desirable method of proceeding in this day and age.

Even if we were to say that it was, what the opposition is now reduced to is saying, "Okay, well, we got this deferred the last time because we said it should be put to the Trenton electorate and it should be put in the form of a plebiscite." It was put to the electorate in Trenton; it just was not done in the form of a plebiscite. So what they are reduced to now is saying that it should have been a plebiscite, that it should have not just have been raised in the election.

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How far down are we going to break it? There is not much doubt the issue was raised, debated and taken responsibility for by an elected representative. He is in no different a situation than any of the rest of you are. If he takes responsibility for an issue, any issue, and succeeds in the election, then he has a mandate to proceed on that issue. We see that all the time, every day, on a range of issues here and on the federal level.

Either we stick with that principle, which is that you put it on the elected representative's head and then you trust him to carry out a mandate and pay the price if he does not, or you do not. If you abdicate to the argument, which is now reduced to saying there should have been a plebiscite, it does not say much about the function of elected representatives.

Mr. Chairman: Members of the committee, if I could have your indulgence, we have heard some issues raised about plebiscites. Perhaps it would be a good idea at this time, with your permission, to allow Mr. Chipman to make a comment or two about plebiscites. Does anyone have an objection?

Mr. Chipman: I just want to make one comment. First of all, I should note that I am not going to make any comment, of course, on the wisdom or otherwise of Trenton city council's decision to take the route it did. I just want to point out to you as a matter of information that if under the Public Parks Act the city of Trenton had held a plebiscite, as it was entitled to do, that plebiscite would have dealt solely with the issue of the dissolution of the parks board.

The bill the city has brought before this committee deals with the dissolution of the parks board, but in addition it provides a correction for a real estate problem. As Mr. Reynolds pointed out, there is some uncertainty about the nature of title that was taken to certain lands. It provides also for the establishment of the parks committee. It provides, in addition, a procedure council would have to follow should it wish to sell any park land. Those matters, other than the dissolution of the parks board, would not have been dealt with in a plebiscite. I only want the committee to be aware that there is more in the bill than would have been dealt with under a plebiscite.

Mr. Sola: Those comments were very helpful. My question is to Mr. Offer. In your comments, Mr. Offer, you mentioned there were several precedents for this type of legislation. In any case, did the municipality, upon acquiring title to the lands of the parks board, dispose of any of those lands?

Mr. Offer: We do not know the answer.

Mr. Sola: Some of the submissions we have here seem to indicate that one of the intentions in getting this bill passed is to get rid of some of these park lands for other purposes, for development or parking lots. I am wondering whether we in this Legislature should be getting involved in something of such a strictly local nature. As one of the articles here says, we would not know a park in Trenton if we landed in it. So whether it is appropriate for us to decide who will make the decisions of whether that remains park land or becomes a parking lot or a development is of a little bit of a ticklish nature.

Mr. Reynolds: Very briefly, I can indicate there is no hidden agenda, at least not on my instructions. The mayor is here so he can correct



me if I am wrong. The purpose of the process is not to dispose of park lands. Indeed, a lot of the lands that are involved have been donated in various fashions to the city or the parks board and are subject to a trust condition where they cannot be used for any other purpose anyway.

Beyond that, in this day and age as you can appreciate, perhaps especially in Trenton, it would be political suicide to come out in the open, as this bill would require and say, "We are going to dispose of park land and make it a parking lot." It is not a realistic concern that council is going to use this as a vehicle to dispose of park land. Perhaps the best proof of that is that over the years council could have used its appointment powers to the existing board to eventually, in a very awkward way, load the board and have the board do whatever it wanted.

The curious thing is that under the legislation as it stands now—staff can correct me if I am wrong—there is no provision for any sort of public notice or warning about the disposition of public park lands. If council had chosen to so manipulate the existing parks board to dispose of park lands on a dark and stormy night, there is no process in existence now to prevent that. The private bill we are asking to have enacted would prevent that from ever taking place by requiring that there be prior public notice by council before it could even vote on whether to dispose of park land, and requiring it to give a public hearing to anybody in opposition.

Really, when you come right down to it, the park lands will be better protected under our private bill from the threat of disposition on a dark and stormy night than they are under the existing parks board structure.

Mr. Kormos: I have listened very carefully. There is an editorial that has been given to us from January 23, 1989. It bothered me a little. It should give it more credibility with some of the other people here because, among other things, they take a little shot at the New Democratic Party for what they call our grandstanding tactics last week.

Mr. Chairman: That is awful.

Mr. Kormos: I thought so.

I am not going to apologize for it, because it was an issue as important as this one. But in that editorial, the author suggests that there was no real issue of the parks board during the course of the mayoralty election, that indeed the opponent—and you have made reference to this—raised it, but his efforts went almost unnoticed; the issue did not spark a response from other candidates. Subject to that being grossly in error, and I am concerned about credibility because of what they said about us, that would seem, first, to contradict what you say.

Second, you say you wonder what the system is all about when the wishes of a newly elected council are not abided by. For God's sake, surely the base line is that any elected council should be obligated to abide by the law and not to sneak in the back door when it cannot get in the front door. What it is all about, it seems to me, is letting people exercise rights which are given to them by statute. That goes back to what I said earlier.

Third, one wonders whether the matter of the protection you speak of, the need for public hearing, is really proper in a bill to be considered here. Surely that type of procedure is something which, rather than being legislated

by provincial legislation, could be determined by the council itself as part of its own statutory procedure

The matter of correcting the deeds does not seem to be a matter requiring private legislation or any provincial legislation. I have no real familiarity with the legalities of that sort of thing, real estate and so on, but that seems to be something that could be dealt with by way of any other number of procedures lawyers do in their offices as opposed to what people try to do here.

The last two matters do not particularly impress me because, as I say, the matter of public notice is something that does not have to be by statute and probably should not be by provincial statute. Rather it should be by a municipality's own bylaws and procedural rules. The creation of a parks committee seems to me to be something a council has within its power by virtue of the powers a council has in, among other things, the Municipal Act.

The real issue is whether the people are going to be deprived of a plebiscite. The real issue is whether this council is going to uphold, adhere to or be guided by the laws that exist, regardless of how inconvenient they think that is or how archaic. That is it. That is the law. That would seem to me to be the base line.

As well, there seems to be some dispute about how much of an issue this was during the course of the mayoralty election. The suggestion, unless this is one of two newspapers in Trenton, the other one taking a contrary position, is that while one party tried to make it an issue, the other party fled from it as an issue. That is the suggestion in the editorial.

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Mr. Reynolds: As far as the editorial is concerned, I think it is fair to say—Mayor Robertson can correct me if I am wrong—that Mr. Tripp did try to make it an issue and received no support. Mayor Robertson's position was very clear throughout the election. It is simply that the opposition did not get anywhere with it, which tends in my submission to show that you are dealing with a special interest group, not a groundswell of opposition.

As far as your question of why the notice provisions and hearing provisions are in the bill rather than leaving it to the city to deal with by way of bylaw, we put those provisions in the bill so they would be in the legislation precisely to answer the concerns of the opposition. We wanted them to know there was no way the city would ever be able to dispose of park lands without complying with these procedural requirements.

We wanted them to know that council would not be able to get around it or deal with it by way of bylaw. In effect, we were expressing our good faith. We were saying: "You have concerns that we'll dispose of park lands some dark and stormy night. We're prepared to have this private bill, which will govern us, say specifically that we can't do it, rather than leaving it up to us to decide by way of a bylaw." That is why it is there.

Finally, with the suggestion that council was somehow acting outside the law by not using the plebiscite, the short answer is that it is a recognized part of the legal and political process in this province for municipalities to obtain amendments exactly like this one through exactly this process rather than the plebiscite process. We are not avoiding anything. This is simply an established, well-recognized route, whereby a municipality, an elected council



can come to the Legislature and ask for a private bill such as this. We are not avoiding anything.

As I think I mentioned before, some members of the Legislature here today such as Mr. O'Neil have previously sponsored almost identical bills. I am sure they did not think they were assisting council in avoiding the law.

Mr. Chairman: Thank you very much, Mr. Reynolds. It is now 12 o'clock. We have an objector, Mr. Bonn. Members of the committee, given that we did not sit last week, my suggestion is that we extend sittings a bit today. Does anyone have any objections? Mr. Bonn, could you indicate how long you expect to be? Perhaps that would help us make our decision. Would you come forward to the microphone, please?

Mr. Bonn: To meet the points raised by Mr. Reynolds, I suppose I would be 20 to 30 minutes.

Mr. Chairman: Is it the pleasure of the committee that we—

Mr. Keyes: Extend to 12:30 p.m.

Mr. Chairman: Fine. There are no further comments from Mr. Reynolds? Perhaps we could hear from Mr. Bonn now then.

Mr. Bonn: My name is George Bonn. I am a solicitor. I have been retained by a group of opponents to the private bill to represent to this committee their objections to it. I might say at the beginning that I and my clients are very gratified that finally Mr. Reynolds and the proponent of the bill come to this table and deal with the essential argument we have been pushing since Mayor Robertson first publicized his intent to kill the Public Parks Act and kill the Board of Park Management in Trenton.

If you have read the transcript of the hearing on June 15, you will see that Mr. Reynolds tried to slip away from that and deal with the administrative advantages of having the parks board abolished. He dealt with the buzzwords of effectiveness and efficiency being improved if the Trenton parks board was abolished.

If you will read my response to that in the transcript—perhaps you already have—that is a nonissue. It was shown to be a nonissue. It is on several pages of my brief as being a nonissue. There is no way that abolishing the Public Parks Act in Trenton will improve effectiveness or the efficiency. The points are there about all the park boards being subject essentially to the day-to-day control of the general policy of city council and its administrative staff.

Mr. Reynolds did not even bring that up today, because that was soundly shown to be a false argument in June. In June I attempted to argue mainly the essential undemocratic nature of this bill. It must have carried some weight with the committee then, because I see Mr. Reynolds now comes back today and deals with that point. He is now fighting on my turf and that turf carries with it, quite frankly, what is right.

As Mr. Kormos pointed out, a general law of Ontario which has governed this province, every person in this province and every community in this province since 1883, allows a community, through its council and through its electors, its voters, its residents, to set up an independent agency to operate its parks and its park lands. Quite clearly that was done to protect

parks and operations of parks from councils who are subject to all kinds of other pressures for the perceived good of the community in the preservation and operation of parks.

That law is well over 100 years old and is still the law of Ontario. I do not know how many communities have adopted it over the years, but Trenton adopted it the year after the bill was passed in 1883. Trenton has always had a Board of Park Management. Never was it controversial until Mayor Robertson was elected in 1985. I believe he was elected for a first two-year term before that in 1982. But when he was elected in 1985, and not having made any issue of it during the campaign in 1985, he raised the issue and pushed it.

The first thing that he raised was that it was illegal to have park lands in the name of the parks board and not the city. That is dealt with in the brief; it was dealt with last June. It is not illegal. There is a strong argument that can be made that it is legal and proper if the land is devised to the parks board in some way by gift, and that is dealt with in the brief.

That argument having been dealt with, they then turn to the defect or the deficiency, and that is shown to be a red herring and false. It comes down to a political argument: where the control should be and what in essence is more of a local concern, not to be debated and decided upon by the members of all constituencies across Ontario, but by the people of Trenton. It is their park land.

I would ask you to bear in mind that park land in Trenton for some reason has always been jealously guarded by Trenton voters. You will see in my brief, under tab 2, a bylaw which council was required to pass in the 1950s by pressure from the voters. That bylaw provides that no park land in Trenton can be sold without approval of the voters. That bylaw binds the present council and binds the present parks board. It has not been spoken of, but the present bill repeals that bylaw. The parks have always been, as I say, jealously guarded by the voters of Trenton, as is shown by the material that is before you: the editorials and the letters to the editor.

I want to move on now to the argument my friend has been making time and time again this morning. That is that the November municipal election constituted a plebiscite on this bill by the voters of Trenton, and since they elected Mayor Neil Robertson, who has been the chief pusher of this bill since 1985, therefore the voters of Trenton want this bill. That, in my respectful submission, is totally wrong and totally false.

Perhaps having heard many lawyers, most of you might appreciate that the skill of a lawyer is being able to come before a body such as this or a court or a judge with the colour black and persuade that the colour is white, right in the face of black. What my friend has been doing is coming before you with a totally undemocratic bill, saying that there was a plebiscite on it by the municipal election and therefore saying that it is a democratic bill. And quite frankly, in the words of Mr. Kormos, that simply astounds me.

It reminds me of the attitude of the man who kills his parents and then pleads for leniency because he is an orphan. That is what it reminds me of, because if you see the first editorial in that package that you have, the one called, "Put to a Vote,"—and I have it highlighted in green and a red arrow—Mayor Robertson killed this issue last July. He made a public statement after the hearing in June, and I will quote the editorial.

This editorial was published published on July 13, 1988, shortly after



this committee, differently constituted, tabled the bill. The editorial says: "Meanwhile, Mayor Neil Robertson says the private members bill is a 'dead issue,' since getting the parks administration under city control was accomplished through a parks board directive."

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I read this some three weeks after I was here pleading against the bill. I immediately talked to the people who had consulted me and we took it as a dead issue, that the mayor was finally persuaded that he ought not to go forward with this bill. Therefore, it was not raised to any extent during the municipal election campaign. Paul Tripp did not campaign on that issue. It may well have been mentioned at one or two all-candidates meetings, but it was not raised as an issue.

That is corroborated by the final editorial that was published in the Trentonian, our single municipal newspaper, two days ago. I believe it was Monday. You will see it takes up the whole page. That is how important an issue it is in Trenton. It is quite an appropriate statement that the proponents of the bill decided to let sleeping dogs lie. Why raise it? Why get the people stirred up about it? The people, by the public statements of Mayor Robertson, thought it was a dead issue which would not be coming back.

Indeed, I did not know that I would have to come back here today to plead against this bill until two weeks ago, which was something like five or six days before the originally scheduled hearing last Wednesday. All of a sudden, it came out of the blue, a call from the clerk that she had just been asked to bring this matter back before the committee.

Not only that, but my friend argues that it was an issue and it was brought before the people. Mr. Kormos asked a very incisive question. All council had to do to properly put it before the people and make it subject to public debate was to pass a simple bylaw. It would have taken five minutes of council's time at any meeting after June and before November to pass a simple bylaw purporting to abolish the parks board; that by law, under the Public Parks Act, it would have been required to have been put on the municipal ballot. That is under subsection 10(2) of the Municipal Elections Act, which states that if a particular bylaw requires by law the approval of the electorate, it is to be put on the ballot of the next municipal election.

There is no way that council could have argued that is cumbersome or archaic or it takes a long time or is expensive. Pass it in July, debate it in September and October, the people decide in November. No time, no cost, no expense, no archaism and no cumbersomeness. Council and Mayor Robertson, in particular, chose not to do that, but rather to put it to sleep with the public statement that it was a dead issue. So I say to you that it is really rather outrageous for Mr. Reynolds to try to convince you that it in fact was a public issue during the election campaign and was decided upon by the people.

I also draw to your attention that there is a real concern about—I would not call it a hidden agenda, but what is the reason behind this push for the bill? Never, until Mayor Robertson came to power, was there ever any controversy over the parks board management of Trenton parks. Never was there a sale. Never, in over a hundred and some years, did the parks board ever sell park land in Trenton, and Trenton has over 35 small and larger parks.

In this day and age, we all know that waterfront property, in

particular, is very, very desirable for development. One of the major undeveloped parks in Trenton, in the sense of being essentially a flat grassland area, is right on the Bay of Quinte. It happens to be right behind the Canadian Legion building. The legion wants to build a high-rise housing unit.

You will see that I have put before you some comments by the president of the legion indicating, in support of what I submitted last June, that the legion wants that land. There is an indication that they have received some support from city officials that they might get that land if the city ever gets control of it.

You will note the comment by the president when he made his annual speech to his members. He said, "If by chance we are able to get the land near our present building"—and that is the park land, Bayshore Park—"which I would prefer, we will build our legion village there."

There is also a small park called Fraser Park. It is very small, a couple of hundred feet by a couple of hundred feet of grass land, flowers and whatever, in behind the main commercial block. As have all communities, Trenton has a problem with parking, and there has been a strong undercurrent in the town that this park, once it is taken away from the parks board, might well be turned into parking.

From discussions with Mr. O'Neil, the Minister of Tourism and Recreation, I am authorized by him and asked by him to represent to you that he strongly opposes this bill. That is his constituency and he feels it is an improper bill to deprive the citizens of Trenton of their present right and entitlement to have a vote on this particular issue.

It is also my understanding that Mrs. Fawcett, who is here, opposes that bill but sponsors it to put it before the committee and give the proponents of the bill their right to have their arguments heard here.

My friend argued a point—and the attitude with which he proposed it was—that there are two rather equal mechanisms for abolishing a parks board, one being the cumbersome, archaic and expensive method of a city council bylaw, subsequently approved by a plebiscite, and the other one being by private legislation.

I would ask you to review quickly the comments of the senior legislative counsel in an article he wrote that is in my brief. He talks about private legislation and makes the very concise and strong point that private legislation should be reserved to bring about a remedy which is not available under the general law. Quite frankly, that is obviously what it should be used for, but where you have a remedy for what is sought in Trenton under the general law applicable to all other citizens, then use that law, not the hammer of private legislation.

I suggest to you that the argument that there are two equal mechanisms to carry out the effect of the act is simply not true. There is a second one available if the Legislature can be convinced to use it, but it certainly should not be put on a par with what the general law provides for.

This has been touched upon, but let's put it in plain, simple language. If this bill is reported to the House, it is going to deprive the Trenton voters of a vote that they now have by law and that every citizen of every community which has a parks board now has. You are taking the Trenton voters



away from that and saying: "You in Trenton don't get the vote. All the people in all the other communities that have a parks board have the vote, but you do not have the vote."

My friend touched upon the question of the protections that the bill gives against the sale of public park land. He alluded to the fact that even now the parks board in Trenton, on a dark and stormy night, could sell the park land.

I say several things to that. One, it has never happened in over 100 years. Two, when people agree to serve on the parks board, they are there because they have an interest in parks. They are not going to sell parks off, because their interest is keeping parks. Three, under the bylaw that is now in place in Trenton, park land cannot be sold without the approval of the voters. Four, right now under the Public Parks Act the land should be vested in the name of the city.

The parks board, I might say by way of aside, has no problem with that. If there is any land in the name of the parks board, a simple registration of the deed, without any cost, without any time, can put it in the name of the city; but it is in the name of the city and under the Public Parks Act it is controlled and managed by the public parks board. Clearly, under the present law, it would take the co-operation of both the parks board and city council to sell any land.

It is simply wrong and inaccurate to say that the parks board, on a dark and stormy night, could sell land out from under without notice to the public. That cannot happen legally, it cannot happen politically and it has never happened, as I say, in over 100 years.

Subject to any questions the committee might have, those are the points I wish to make this morning. The material that I filed making more extensive points is, as I say, before you.

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Mr. Chairman: Thank you very much, Mr. Bonn. Are there any questions of Mr. Bonn?

Mr. Smith: Just a short comment, Mr. Chairman. We have heard the accusation that local option is not a good idea in some areas. This is the first case I have heard where local option should be used.

Mr. Keyes: I was just going to say it was very nice to hear Mr. Kormos support the idea of local option. It is quite different from what we have been hearing. Thank you very much for that, Peter. I appreciate it.

Mr. Kormos: I am just supporting the rule of law and order.

Mr. Keyes: I wonder if Mr. Bonn knows the acreage of parks in Trenton and the ratio of acreage of parks to population.

Mr. Bonn: I can consult Mr. Tripp. He is a former chairman of the parks board and a former alderman in Trenton.

Mr. Keyes: I was just wondering what its ratio was with respect to the provincial average. There are facts and figures in that regard that let us know whether we are overparked or underparked.

Mr. Bonn: I am told that there is approximately one acre of park for every 500 people in Trenton.

Of that acreage, from my own personal knowledge because I have lived all my life in Trenton essentially, there is a kind of wilderness, a wooded park, which has to be 20 or 25 acres, Hannah Park. There is Bayshore Park, which is a flat field next to the bay, an undeveloped, flat grass park on the shore of the Bay of Quinte, which I would visualize as being five or six acres. There is Centennial Park on the other shore of the Bay of Quinte, which is highly developed with sports fields and other things. It has got to be around 20 acres. On the west end of town, adjacent to the air base, and again on the shore of the Bay of Quinte, there is probably a 10- or a 15-acre park that has been developed into sports fields, with a canteen building and a beach.

In addition to those major parks, there are a number of what are called neighbourhood parks. There might be a couple of city lot size, with swings for the neighbourhood kids and that kind of thing.

Mr. Keyes: You are using the figure of one acre to 500 people approximately. Do you know whether the issue of trying to resolve this was ever published with public notice prior to any consideration by council in, I believe, early January—no; perhaps it was December. Mr. Reynolds did not give us that date.

Mr. Bonn: Before the latest resolution of council?

Mr. Keyes: Yes.

Mr. Bonn: I do not know. I can find out about that. It certainly took me by surprise, and I try to keep myself up to date.

Mr. Keyes: We may get a comment from Mr. Reynolds on that again.

Mr. Bonn: I think it has been brought out that there was one dissenting councillor and there are now two who dissent from that.

Mr. Keyes: Yes, we have those here. I am just wondering whether you are aware if there were ever any meetings held between the parks board and council to discuss the issue of the whole point of the transfer?

Mr. Bonn: Yes, the parks board attempted to conciliate and say, "How can we improve without abolishing us?" There was never anything concrete that came back in this way, how you can improve. It is a political question. Council wants control.

Mr. Keyes: Again, the repeal of bylaw 1107N is the one that restricted the parks board from selling park land without a vote of the people. Is that correct?

Mr. Bonn: It appears that way.

Mr. Keyes: Because I read it in your brief, it appeared that way.

Mr. Bonn: Yes, I would read it that way.

Mr. Keyes: That would now be repealed under the potential—

Mr. Bonn: Under the bill, that repeals that bylaw. The bill does repeal that bylaw.



Mr. Chairman: Are there any further questions? Hearing none, are there any questions to Mr. Reynolds as a result of Mr. Bonn's comments?

Mr. Reynolds: I should say, sir. I have some.

Mr. Chairman: Mr. Reynolds, you have a response. Could you please be brief?

Mr. Reynolds: Yes. There are a couple of points I want to deal with simply because I do not like the position I took on a previous occasion being misrepresented, and I will try to say this as quickly as I can. It was suggested that I shied away at the last meeting from the fact that there was a political objective here. I have read the transcript. I did not.

I explained to that committee, as to this, that the objective was to move control to the elected council, for reasons of political responsibility, as well as for reasons of administrative efficiency. That was very clear in the transcript. The suggestion that I did not make that point to the previous committee is false.

It was also suggested that I abandoned the argument that it would be more efficient. That again is false. I have looked at the transcript. I did not abandon it.

Further, there has been mention made of the 1950s bylaw which prevents the parks board from selling land without a plebiscite. The reason I do not mention that and have not mentioned it as being any restriction on the power of the current parks board to dispose of land is that the bylaw is undoubtedly invalid as an improper delegation of authority under the Municipal Act. I am quite content that you consult counsel if you have any doubt about that.

Also, with respect to the position adopted by Mr. O'Neil, I only have to say that it was Mr. O'Neil who in 1984 sponsored an identical bill for his constituents in the city of Belleville.

With respect to the comments in the summer by Mayor Robertson, I have asked, and he indicates that what he said was that his objective of obtaining political control was a dead issue in the sense that it had been achieved in any event through other means. But he did not indicate that the objective had been achieved in terms of solving the problem to do with the park lands being improperly registered, and he did not at any time convey that he was abandoning this private bill.

Second, as to its being an issue in the campaign, I have, as you do, Mr. Tripp's advertisement in which he goes on about the park lands and so on and people who have been dedicated to building and preserving the parks. Mr. Tripp believes that our city park lands belong to all the citizens. He is willing to use his position as mayor to preserve and protect those lands. He intends to guard them as a sacred trust. He has no hidden agenda. My friend suggests that all this was not an issue in the election.

Having said all of that, I would like to turn to one specific issue, this question of the difficulty with the current legal status of the park lands. In light of all that has gone on here today, it may be important, for this simple reason: It is the determination of council, and I have to agree with council, that there is a real live issue as to whether or not the lands currently held by the parks board, as mentioned in the bill, are validly held by the parks board. There is a real problem with that. As was mentioned at the outset, one of the objectives behind this bill was to solve that problem.

Regardless of how you eventually determine to proceed in terms of the broad thrust of the bill, in terms of abolishing the parks board and moving its operations under the umbrella of council, we desperately want a private bill which, if nothing else, resolves this title problem. Accordingly, should you determine, as I hope you will not, not to recommend passage of the private bill in its entirety, I would urgently ask you to recommend passage, either today or as soon as the bill can be conveniently redrafted, of those portions of the bill which correct this title problem.

Because I am making you that more or less supplemental request, I should explain why in some detail. The Public Parks Act says very clearly that land should be taken by the municipality, not the parks board. Section 12 says gifts and bequests are to be to the city. Section 13 says purchases and leases are to be to the city. Interestingly enough, the first legal opinion to the effect that there was a title problem which ought to be rectified by the city's obtaining title was provided by the lawyers for the parks board, for Mr. Bonn's client and its predecessor.

I do not propose to tell you in black and white, absolute terms that there is a title problem, other than to say that other solicitors and I have serious doubt as to whether the title is valid. It is for that reason that the city included provisions in this bill asking that the title be regularized.

As I say, if nothing else gets passed here today, we would ask that the portion of the bill regularizing the title be enacted. I would point out that under the Public Parks Act, although the property must be held in the name of the city, if the parks board remains in existence then the parks board retains complete authority over it. There cannot be any argument that this will somehow weaken the parks board's control. All it does is correct the mess on title.

Having said that, Mayor Robertson has indicated to me that he would like to speak very briefly on that point and I would ask your indulgence in that regard.

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Mayor Robertson: First of all, Mr. Chairman, I apologize to your committee that you are being dragged into a city of Trenton political problem.

I want to tell you that lawyer Bonn here was the bagman for Mr. Tripp in the last election. Now I want to tell you something. This is a political issue as far as these people are concerned. As far as I am concerned, I want to tell you how this came about.

In November 1984 I received a letter as mayor from a solicitor in the city, Rod Campbell, pointing out to me that some irregularities were apparent in some deeds for park land.

In January 1985 I asked the chairman of the parks board to have something done about this. It was not done. As a matter of fact, the chairman of the parks board at that time asked me not to do anything; she did not want to get involved in a political fight because she knew it was going to be one.

In any event, in January 1986 a meeting was held between the Trenton Board of Park Management and the city of Trenton council and we discussed the issues. The two objectives that I pointed out to them at that time were, and I will read them: "(1) to see that all park land is put into the name of the



corporation of the city of Trenton and (2) to bring the director of parks and recreation under the umbrella of city hall administration."

The second objective was attained when we appointed new members to the parks board. They passed a resolution authorizing or instructing the parks administrator to report to the city administrator. We were having a problem there because we have a parks and recreation committee; the recreation director and the parks board director are one and the same person. The administration was having problems dealing with that. We have since then had that corrected. That is when I was quoted in the paper as saying that this section of it was a dead issue.

What we want to do is to see that the park land is put back in the name of the corporation of the city. Quite frankly, I do not care at this stage whether or not—and my lawyer is going to kill me—you pass this thing, as far as the entire bill is concerned. What I want to do is what I am supposed to do by the Municipal Act, and that is to see that all the laws are carried out.

We have an illegal issue here where the land is in the name of the parks board. All we want to do is put it back into the name of the city, and all the rest of this smoke can be blown away and you guys can go to lunch. Thank you.

Mr. Kormos: I am just wondering, if Mr. Tripp comments, will we find out who the mayor's bagman was?

Mr. Robertson: The mayor didn't have one.

Mr. Chairman: That comment was uncalled for and unnecessary.

Are there any further questions? Being none, we will put the question.

Mr. Keyes: Could I just ask a legal question?

Mr. Chairman: Yes, quickly.

Mr. Keyes: It is a legal question through you, Mr. Chairman, to the officials. There was a suggestion that if this bill were not passed it at least be held back for amendments so it could bring forth the portion that is included in the schedule which seems to set out the description of all the lands. Is it at all possible, or is it not more appropriate that it would have to be a totally new private bill?

Mr. Chairman: Would you comment on it, please?

Ms. Mifsud: It is rather difficult because the preamble has to be changed to reflect what is going to stay in the bill. But as far as I can see, there are only two sections that are necessary to accomplish what Mr. Reynolds wants, which is section 1 and subsection 2(2). By voting against all the other provisions, other than the commencement and short title—if you want to authorize simplifying the preamble, I could perhaps draw up a motion now that could achieve that.

Mr. Bonn: I can say quickly that [inaudible] local element within the next week by deeds.

Mr. Chairman: I do not want to give legal advice, but it strikes me that there are other avenues and other ways of getting this done.

Mr. Reynolds: If I may add, there is a problem that some of these are rather old properties. It might be possible to deal with it by way of deed, depending on whether people are still alive in all cases and around. But if it is done this way, by private legislation, then it is over and it is done. There is no doubt. There is no problem and we are finished today. That is the difficulty. For example, we got into an argument before about who did deed have to come through, etc. This kills it. It is a neat, simple solution so that it is over and there is no question about the title.

Mr. Chairman: I do not know what members of the committee would like to do, but we have had representations from counsel. It is a rather serious matter and I do not know whether they want more time to deal with it. If that is the case, then there could be a suggestion to adjourn.

Mr. McCague: Mr. Reynolds did bring into the scenario, pretty late in the day, a suggestion about what might be done to alleviate some of their problems. I am not sure whether they are problems for the opponents of the legislation or not. My strong suggestion would be that we adjourn and let them have some time to work some of these things out and come back with a short bill.

My consensus would be—and I have no idea what yours is, Mr. Chairman—that we are not wholly enamoured of this bill but that some accommodation of a problem that exists would seem like a prudent thing for this legislative committee to do if there is no other way of doing it. I would suggest that we put this off for some future date.

Mr. Chairman: I share your concern and your comments.

Mr. Bonn: My people have been dealing with their concerns for four years. Could we not deal with the bill? If we cannot work out our local differences—it will not take two years to bring another bill back simply to correct the title problem.

Mr. Chairman: Mr. Bonn, it would not take very long if there was an accommodation that could be made. I do not see it as something that would drag on. If it was clearly on consent you probably would not need to come back here.

Mr. Reynolds: I wanted to avoid readvertising and the whole process that that would entail. As counsel says, you are talking about a two-section bill. We could write it here in about three minutes.

Mr. Kormos: I am concerned about that all the more so. Why should that be dealt with by way of a private bill?

Mr. Chairman: It may not be necessary.

Mr. Kormos: It seems to be so. I do not know. You have got things like correcting deeds and quit claims and so on. That is the little bit I know about it.

Mr. Chairman: Mr. McCague, are you moving for an adjournment?

Mr. McCague: I am quite an accommodating chap. I would like to help in any way I could to resolve this in a fashion that would suit everybody. I am just not sure. Legislative counsel and Municipal Affairs, I guess, were in favour of the bill in the first place. I am willing to hear arguments on it.



Mr. Keyes: In order that we do not end up missing one little important part or other, I concur that the consensus that I have listened to today seems to express concern for the bill in its entirety but support for the legal aspect that wants to be resolved by both solicitors, neither of whom agrees on a method to do it other than the fact that a private bill could certainly clear it up.

I am not sure that the term you want to use is adjournment. I would have just said postponement of consideration of this until the earliest possible time, whether that is next Wednesday, without any need for readvertising and the rest, that that be done and be dealt with or whether it is one week or two weeks from now.

Consider it as a continuation, if that is legally possible, with the appropriate amendment to Bill Pr40, with the philosophy behind it that it removes the dissolution of the board but does clarify titles, which also seems to be one of the major issues here.

I do believe that there has not been enough discussion between the parties themselves, the parks board and the city, to try to reach that accommodation. We can show our accommodation by getting part of it done in the next week to two weeks.

Mr. Chairman: Mr. Bonn, what is your objection to that?

Mr. Bonn: I suppose my opponents would like to go back saying that finally their concerns have been dealt with. We have offered before to simply quit claim in favour of the city with these lands. To table it again we know what can happen. Bells can ring; sessions can get adjourned. We could be back here several months from now and my friends could have remarshalled their arguments and come back and open up the whole thing again.

Mr. Chairman: I cannot speak for the committee, but if we were to reject or not adopt the sections of the bill that we are not in favour of but reserve on the sections that the counsel has indicated, it could be redrafted and modified into a new bill. Would that not suit your purposes?

Mr. Bonn: Yes, sir, that would. Thank you very much.

Mr. Chairman: Is it the pleasure of the committee then that we put the question, we go through them? Perhaps if the counsel could give us those sections again that we should not be—

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Mr. Keyes: Do you think we have time to do that today? The principle we wanted to maintain was that we do not dissolve the Board of Park Management but that we transfer the ownership of the property to the city. There are such things as whether the repeal of those other bylaws is still necessary. There seem to be several sections that would be impacted on as opposed to, as counsel said, a couple of them. I would hate to have us miss some of them.

Mr. Chairman: What is the pleasure of the committee? Would somebody make a motion?

Mr. Keyes: I would like to move, if it is possible, that an agreement be dealt with next Wednesday or at the next meeting time, whenever that is, in a week or two, unless they are prepared to stay till one o'clock and have it done with today.

Mr. Reynolds: Gentlemen, if I can help, I have spoken to Ms. Mifsud. All you would need to rectify the title problem is the preamble to be amended slightly and section 1 and subsection 2(2). Nothing else is necessary, because you are not changing anything else. That is all you have to do. Disapprove everything else and either approve or defer on the preamble, section 1 and subsection 2(2). That is it; that is all you have to do.

Mr. Chairman: All right. Is legislative counsel content?

Ms. Mifsud: I think I understand. I have spoken with counsel. What you would need to reflect what you would seem to be agreeing to is a motion to amend the preamble, which I have prepared, and for section 1, subsection 2(2), sections 10 and 11 and the schedule to remain.

Mr. Chairman: Mr. Bonn, do you have any problem with that?

Mr. Bonn: No, sir.

Mr. Chairman: Can we go through it section by section?

Section 1 agreed to.

Section 2:

Mr. Chairman: Shall subsection 2(1) carry?

Interjections: No.

Mr. Chairman: Shall subsection 2(2) carry?

Interjections: Yes.

Section 2, as amended, agreed to.

Sections 3 to 9:

Mr. Chairman: Shall sections 3 to 9 carry?

Interjections: No.

Sections 3 to 9, inclusive, negatived.

Sections 10 and 11 agreed to.

Schedule agreed to.

Title agreed to.

Mr. Chairman: Shall the preamble carry?

Interjections: No.

Mr. Chairman: Mr. Keyes moves that the preamble be struck out and the following substituted therefor:



"Whereas the corporation of the city of Trenton, herein called the corporation, hereby applies for special legislation for the purposes set out herein; and whereas it is expedient to grant the application;

"Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the province of Ontario, enacts as follows:"

Motion agreed to.

Preamble, as amended, agreed to.

Bill, as amended, ordered to be reported.

#### PETERBOROUGH HISTORICAL SOCIETY ACT

Mr. Chairman: Members of the committee, there are two other very short items. Where are they?

Mr. Keyes: I move, with respect to the Peterborough Historical Society, which made a presentation to us earlier, that the committee recommend that the actual cost of printing at all stages and in the annual statutes be remitted on Bill Pr53, An Act respecting the Peterborough Historical Society.

You will recall that Mr. Adams appeared on behalf of the Peterborough Historical Society, but the committee neglected to recommend the remitting of the actual costs.

Mr. D. W. Smith: Is this normal procedure? We are not setting any precedent?

Mr. Keyes: It is normal procedure for many bills of this nature.

Mr. Chairman: All in favour?

Motion agreed to.

#### ORGANIZATION

Mr. Chairman: One other final thing. We have an invitation from the Parliament of Australia, the standing committee on regulations and ordinances. What it is doing is inviting members of the committee to attend a conference in Canberra on April 26, 27, 28, 1989. Is it the pleasure of the committee that we do so?

Mr. Keyes: I will be glad to carry your bags, Mr. Chairman.

Mr. Chairman: This matter is brought forward for information purposes. Unless anyone has anything they would like to say for or against it, it would be my suggestion that we advise them, "Thank you for the invitation, but no thanks."

Mr. Keyes: There are lots of things I would like to say, but in the interest of economics and other considerations, we will forgo the invitation.

Mr. Chairman: Thank you very much, Mr. Keyes. Thank you very much, gentlemen.

The committee adjourned at 12:45 p.m.

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T-31

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

WINDSOR LIGHT OPERA ASSOCIATION ACT  
JOHN ZIVANOVIC HOLDINGS LIMITED ACT  
SISTERS OF SOCIAL SERVICE ACT  
SUDBURY HYDRO-ELECTRIC COMMISSION ACT  
TOWN OF MARKHAM ACT  
ORGANIZATION

WEDNESDAY, FEBRUARY 8, 1989



STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

CHAIRMAN: Furlong, Allan W. (Durham Centre L)

VICE-CHAIRMAN: Lipsett, Ron (Grey L)

Keyes, Kenneth A. (Kingston and The Islands L)

Kormos, Peter (Welland-Thorold NDP)

Leone, Laureano (Downsview L)

McCague, George R. (Simcoe West PC)

Miclash, Frank (Kenora L)

Pollock, Jim (Hastings-Peterborough PC)

Reville, David (Riverdale NDP)

Smith, David W. (Lambton L)

Sola, John (Mississauga East L)

Substitutions:

Cleary, John C. (Cornwall L) for Mr. Keyes

Kozyra, Taras B. (Port Arthur L) for Mr. Lipsett

Also taking part:

Campbell, Sterling (Sudbury L)

Collins, Shirley (Wentworth East L)

Cooke, David S. (Windsor-Riverside NDP)

McCague, George R. (Simcoe West PC)

Offer, Steven (Mississauga North L)

Clerk: Manikel, Tannis

Staff:

Mifsud, Lucinda, Legislative Counsel

Witnesses:

From the Ministry of Consumer and Commercial Relations:

Haggerty, Ray, Parliamentary Assistant to the Minister of Consumer and Commercial Relations (Niagara South L)

From the Ministry of Municipal Affairs:

Gray, Linda, Adviser, Legislation, Policy

From the Windsor Light Opera Association:

McGivney, John H., Solicitor; with McTague, Clark

From John Zivanovic Holdings Ltd.:

Read, Edward M. D., Solicitor

From the Holy Spirit Centre:

Young, Sister Anastasia, Director

Beretta, Father John, Member, Advisory Committee

Walter, JoAnne, Chairperson, Advisory Committee

From the Sudbury Hydro-Electric Commission:

Prudhomme, Harvey, Manager, Human Resources

From the Town of Markham:

Swayze, Robert J., Town Solicitor

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Wednesday, February 8, 1989

The committee met at 10:08 a.m. in committee room 1.

WINDSOR LIGHT OPERA ASSOCIATION ACT

Consideration of Bill Pr81, An Act respecting the Windsor Light Opera Association.

Mr. Chairman: The committee will come to order. Welcome to the standing committee on regulations and private bills. The first item on the agenda this morning is consideration of Bill Pr81, An Act respecting the Windsor Light Opera Association. Mr. Cooke is the sponsor of the bill. Mr. Cooke, will you come forward with your delegation, please.

Mr. D. S. Cooke: I am right here. I would like to introduce to you the spokesman for the Windsor Light Opera, John McGivney.

Mr. Chairman: Would you come and take a seat, Mr. McGivney.

Mr. Cooke, are you going to be making the representations or is the applicant?

Mr. D. S. Cooke: Mr. McGivney will make it.

Mr. Chairman: Mr. McGivney, do you have a statement you would like to make at this time?

Mr. McGivney: I will be very brief, if I may. This is a tax-exemption authority which is applied for under the private act. This concerns the Windsor Light Opera Association, which is centred in Windsor. The focus of its activities is directed at Windsor and Essex county, but that is not to say it does not have a good following among the Detroit group as well.

The organization has been in existence for more than 40 years. It is a nonprofit charitable organization. Its objects are to promote the interest and skills associated with the theatre arts. These objects are pursued through the production of well-known musical and dramatic presentations and by educational and instructional projects. Since its formation in 1948, the Windsor Light Opera has put on more than 75 major productions which have been made available to a viewing audience in excess of a million people in that area.

Almost all of the work that is involved in the Windsor Light Opera Association is conducted by its volunteers. Salaries and other expenses associated with its productions and educational projects are offset by ticket sales to the general public and a contribution from its patrons, so that the organization does not represent a drain on the charitable resources of the community to which it appeals.

The organization has received several Wintario grants. A major one, of close to a quarter of a million dollars, permitted it to construct a community theatre resource centre. The authority which we seek by this private act has



the support of a resolution of the Windsor city council and the Windsor Board of Education.

I will be happy to answer any questions that you may have in connection with this.

Mr. Chairman: Thank you. Before I open the floor to questions, perhaps we will hear from Mr. Haggerty, who is the parliamentary assistant to the Minister of Consumer and Commercial Relations, as to the government position on this bill.

Mr. Haggerty: The Ministry of Municipal Affairs has no objections to the proposed bill as the proposal meets the criteria used by the committee in assessing such applications.

Mr. Chairman: There are therefore no objections to the bill by the government. Does any member of the committee have any questions?

Mr. Kozyra: Are there other precedents like this?

Mr. Chairman: Yes, there are several.

Mr. McGivney: There are a number of them.

Mr. Chairman: Yes, we are aware of numerous applications of this kind.

Sections 1 to 4, inclusive, agreed to.

Preamble agreed to.

Schedule agreed to.

Title agreed to.

Fee-waiving motion agreed to.

Bill ordered to be reported.

Mr. D. S. Cooke: And I heard they were difficult in committee.

Mr. Chairman: In this committee no one is difficult.

#### JOHN ZIVANOVIC HOLDINGS LIMITED ACT

Consideration of Bill Pr76, An Act to revive John Zivanovic Holdings Limited.

Mr. Chairman: The second bill we are going to consider is Bill Pr76, An Act to revive John Zivanovic Holdings Limited. Mr. Offer is the sponsor. Mr. Offer, would you please introduce the applicant.

Mr. Offer: To my left is Ted Read, who is the solicitor for the corporation, John Zivanovic Holdings Ltd. I understand this is just a matter of corporate revival and there are no objections from the companies branch on this matter.

Mr. Chairman: Mr. Read, would you like to make any comments?

Mr. Read: I will not comment other than the fact that I am not aware of any objections to the revival of the corporation.

Mr. Chairman: Mr. Haggerty, does the government have any objections to this bill?

Mr. Haggerty: I wish to advise the committee that the Ministry of Consumer and Commercial Relations has no objections to the bill.

Mr. Chairman: Fine. Are there any questions? Thank you. We are dealing with Bill Pr76, An Act to revive John Zivanovic Holdings Limited.

Sections 1 to 3, inclusive, agreed to.

Preamble agreed to.

Title agreed to.

Bill ordered to be reported.

Mr. Chairman: Thank you very much, sir. Mr. Offer, it is nice to see you again.

#### SISTERS OF SOCIAL SERVICE ACT

Consideration of Bill Pr61, An Act respecting The Sisters of Social Service.

Mr. Chairman: The next bill that we will consider is Bill Pr61, An Act respecting The Sisters of Social Service, sponsored by Ms. Shirley Collins. Ms. Collins, will you please introduce the applicants?

Ms. Collins: Yes. Thank you, Mr. Chairman. I have with me today from the Holy Spirit Centre, Sister Anastasia Young, who is the director, Father John Beretta and JoAnne Walter, the chairperson of the centre.

Mr. Chairman: All right. Does anyone from the delegation wish to make an opening statement?

Sister Young: We are very grateful that we could be here today, Mr. Chairman, and we are very grateful to the committee for this expediency with which you have acted on this bill.

The Sisters of Social Service have owned and operated the centre for some 42 years. As a charitable organization, the centre has been subsidized by the sisters' work and the token salaries that we have received. We have received no financial help from the public funds and, therefore, have not drained the resources of our community.

We have also preserved at the centre a historic building known as Auchmar House. The rising costs of operating the centre, which has served both municipal residents and also people from the province and outside the province for spiritual and human enrichment—the costs of operating the building and paying our taxes have been a continual drain on the community, the Sisters of Social Service. For this reason, we are asking for a tax exemption on the property of the Sisters of Social Service.

Mr. Chairman: Thank you. Before we open the floor to questions, Mr. Haggerty, does the government have a position on this bill?



Mr. Haggerty: I advise the committee that the Minister of Municipal Affairs (Mr. Eakins) has no objections to this particular bill, Bill Pr61.

Mr. Chairman: Any questions from members of the committee?

Mr. Kormos: Well, we gave them Sunday shopping—

Mr. Chairman: Thank you for that. I am—

Mr. Kormos: So perhaps there could be a tradeoff.

Mr. Chairman: Thank you again, Mr. Kormos, for those unbiased opinions.

We are dealing with Pr61, An Act respecting The Sisters of Social Service.

Sections 1 to 5, inclusive, agreed to.

Preamble agreed to.

Schedule agreed to.

Title agreed to.

Fee-waiving motion agreed to.

Bill ordered to be reported.

1020

#### SUDBURY HYDRO-ELECTRIC COMMISSION ACT

Consideration of Bill Pr60, An Act respecting the Sudbury Hydro-Electric Commission.

Mr. Chairman: The next bill we will be considering is Bill Pr60, An Act respecting the Sudbury Hydro-Electric Commission. Mr. Campbell is the sponsor. Mr. Campbell, could you come forward and introduce the applicant, please?

Mr. Campbell: I have the pleasure to introduce to the committee Harvey Prudhomme, the manager of human resources, Sudbury Hydro-Electric Commission.

This bill is to deal with the payment of benefits. This bill apparently is necessary because when the Municipal Act was amended some years ago to work out this kind of arrangement, hydro commissions were not included. I expect with the kinds of things we do for our employees that it is in order to try wherever possible to enable retirees and present employees to have a full benefit package. That is why we are before you today.

I or Mr. Prudhomme will be available to answer any questions on any aspects of the bill you wish to deal with.

Mr. Chairman: Before we get into questions, perhaps we could hear from the government to see what its position is on this bill.

Mr. Haggerty: I wish to advise the committee that the Minister of Municipal Affairs (Mr. Eakins) has no objections to Bill Pr60. For the information of committee members, the cities of Oshawa, Scarborough and Windsor have similar bills.

Mr. Chairman: Are there any questions to the delegation?

Mr. Kormos: I have no quarrel with the bill, but it seems to be compensating for inadequacy of the Municipal Act. In view of the fact that there have been apparently at least two similar bills passed, and now this one being a third, why are appropriate amendments not made to the Municipal Act so that various commissions do not have to come here seeking this bill relevant to their own commission?

Mr. Chairman: I understand Mr. Campbell may have an answer to that question.

Mr. Campbell: I alluded to the Municipal Act as a separate act. It does not cover this aspect of the hydro-electric commission act or other similar acts. I understand that is the situation. It is a separate situation. I also understand that of the number of commissions structured this way, being Windsor, Scarborough and some of the other ones, this is basically the last one.

It is my understanding that that is the case. There may be others. I do not want to mislead the committee, but my understanding is that it is a separate type of arrangement and the Municipal Act would not cover the hydro-electric act in this manner in any event. I alluded to the Municipal Act only because similar amendments were made to the Municipal Act to allow this kind of thing to happen.

Mr. Chairman: Mr. Kormos, we have a staff that could elaborate somewhat on it as well.

Mrs. Gray: The Municipal Act was amended a few years ago to incorporate the paying of benefits for retired employees of municipalities. The act was amended at the request of a number of municipalities. There was general concern expressed by the Association of Municipalities of Ontario at that time that the permissive legislation in the Municipal Act also put a considerable pressure on small municipalities to pay benefits which they may not be able to afford. The minute the permissive legislation is in, there are actions taken to confront municipalities on this issue. We have not had a request from the AMO or from any other municipality to expand the act further.

Mr. Chairman: Any further questions? Seeing none, we are dealing with Bill Pr60, An Act respecting the Sudbury Hydro-Electric Commission.

Sections 1 to 4, inclusive, agreed to.

Preamble agreed to.

Title agreed to.

Bill ordered to be reported.



TOWN OF MARKHAM ACT

Consideration of Bill Pr79, An Act respecting the Town of Markham. .

Mr. Chairman: The final bill we will be dealing with is Bill Pr79, An Act respecting the Town of Markham. Mr. McCague, are you going to introduce the applicant on behalf of Mr. Cousens?

Mr. McCague: Mr. Cousens went to make a phone call and is going to miss this, I guess. Anyway, it is my pleasure to introduce to the committee Mr. Swayze, the town solicitor, and he will give you a little background on Bill Pr79.

Mr. Swayze: I will be very brief. The application for the bill is to give the municipality the power to provide supplementary pension and retirement allowances to councillors. It will bring the pension benefits in line with Metropolitan Toronto. I believe it is identical to an application from Mississauga for a bill. I will be happy to answer any questions, but those are my submissions.

Mr. Chairman: Before we open the floor to questions, what is the government position on this bill?

Mr. Haggerty: I wish to advise the committee that the Minister of Municipal Affairs (Mr. Eakins) has no objections to this bill.

Mr. Kormos: Just out of curiosity, are city councillors in Markham—is that perceived as a full-time job or are these stipends that are paid to people who are usually working at other jobs?

Mr. Swayze: Some are and some are not. Some consider their jobs full-time and some do not. Most do not, I would say.

Mr. Kormos: What are the salaries or the stipends for Markham councillors?

Mr. Swayze: I do not have those with me, but I believe the mayor is in the \$40,000 range and the councillors are in the \$30,000 range.

Mr. Chairman: Any further questions? Seeing none, we are dealing with Bill Pr79, An Act respecting the Town of Markham.

Sections 1 to 8, inclusive, agreed to.

Preamble agreed to.

Title agreed to.

Bill ordered to be reported.

ORGANIZATION

Mr. Chairman: Could I direct the members of the committee to the suggested agenda for next week? It is my understanding we are still going to be here. We have three bills. I understand that there is some concern about the first one, Pr78. Most of the members, I think, have been lobbied. But if we are here, this is the proposed agenda. I do not know that there are any

other bills that are going to be introduced within the next day or so. If there are, then I assume that they will be added.

Clerk of the Committee: No, we would not add any more bills, because the standing orders state we have to give a week's notice, so unless there is a motion in the House, we could not add any bills to next week's agenda.

Ms. Mifsud: Unless it was introduced today.

Clerk of the Committee: Unless it was introduced today. There is one bill that we will have to look at and see if it can be introduced today, but I am not sure about it. That would be the only change; we may add on one for the city of London.

Mr. Chairman: I might indicate to the members that one or two of these bills have some problems with them, so I expect we will be a little longer than usual, a little longer than today, I guess.

Are there any further questions or comments from members of the committee? Seeing none, the committee is adjourned.

The committee adjourned at 10:28 p.m.





STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

NORTHERN FRONTIER DEVELOP. LTD. ACT

CITY OF LONDON ACT

UKRAINIAN EVANGELICAL BAPTIST ASSOCIATION OF EASTERN CANADA ACT

COUNTY OF LANARK ACT

WEDNESDAY; FEBRUARY 15, 1989





STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

CHAIRMAN: Furlong, Allan W. (Durham Centre L)

VICE-CHAIRMAN: Lipsett, Ron (Grey L)

Keyes, Kenneth A. (Kingston and The Islands L)

Kormos, Peter (Welland-Thorold NDP)

Leone, Laureano (Downsview L)

McCague, George R. (Simcoe West PC)

Miclash, Frank (Kenora L)

Pollock, Jim (Hastings-Peterborough PC)

Reville, David (Riverdale NDP)

Smith, David W. (Lambton L)

Sola, John (Mississauga East L)

Substitution:

Daigeler, Hans (Nepean L) for Mr. Miclash

Also taking part:

Kozyra, Taras B. (Port Arthur L)

McCague, George R. (Simcoe West PC)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Clerk: Manikel, Tannis

Staff:

Mifsud, Lucinda, Legislative Counsel

Witnesses:

From I. Gosselin and F. Camiré Developments Ltd.:  
Gosselin, Irenée, Director

From the Ministry of Consumer and Commercial Relations:  
Levine, Katherine, Solicitor, Companies Branch

From the City of London:  
Blackwell, Robert A., City Solicitor

From the Ukrainian Evangelical Baptist Association of Eastern Canada:  
Ciona, Daniel, Treasurer

From the Ministry of Municipal Affairs:  
Polsinelli, Claudio, Parliamentary Assistant to the Minister of Municipal  
Affairs (Yorkview L)

From the Steering Committee, Smiths Falls and Area Waste Management Study:  
Lee, Laurence S., Chairman; Mayor, Town of Smiths Falls  
Wood, Dennis, Solicitor

From the Township of Bathurst:  
Denison, W. Terrance, Solicitor; with Perley-Robertson, Panet, Hill and  
McDougall

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Wednesday, February 15, 1989

The committee met at 10:09 a.m. in committee room 1.

NORTHERN FRONTIER DEVELOP. LTD. ACT

Consideration of Bill Pr43, An Act to revive I. Gosselin & F. Camiré Developments Limited and to change its name to Northern Frontier Develop. Ltd.

Mr. Chairman: Welcome to the standing committee on regulations and private bills. The first item on the agenda this morning is Bill Pr43, which is sponsored by Mr. Kozyra. Would you come forward and introduce the applicant, please?

Mr. Kozyra: It is my pleasure to introduce to you Irenée Gosselin.

Mr. Gosselin: Good morning. Mr. Kozyra, thank you very much for presenting this private bill on my behalf. My lawyer got sick just before I came down, so I have to do the dirty work for him.

Mr. Chairman: I hope you get paid for it. Lawyers never do dirty work. Right, Mr. Kormos?

Could you tell us a little bit about this?

Mr. Gosselin: I presume you have been briefed on the subject at hand. I ask the committee members to revive this company retroactively and in so doing to protect the rights that have been created by this nonentity of which I am an unfortunate victim. It does not disadvantage anyone.

I am not here to apportion blame, but simply to see justice done and carry on with our lives.

Mr. Chairman: Prior to opening the floor to questions, Mr. Polsinelli, would you give us the government's response, please?

Mr. Polsinelli: Is Mr. Haggerty here?

Miss Levine: I am here. I am a lawyer from the companies branch. We have no objections.

Mr. Polsinelli: We have no objections.

Mr. Chairman: The government has no objection to the bill. Are there any questions from members of the committee?

Mr. Keyes: It is not necessarily so germane to the yes or no of the bill, but perhaps Mr. Gosselin would be able to give us some quick idea as to how the chain of events came about that the company was cancelled under request from solicitors for Mr. Gosselin who then in turn carried on. There seems to be a phenomenal amount of correspondence if you go through all the background of this particular bill.

Without attempting, as he said, to apportion any blame, could he in his own words give an explanation of what he considered happened in this situation?



Mr. Gosselin: The company was dissolved in 1978, as you all know. In 1980, my wife and I wanted to incorporate a new company. The lawyer at the time suggested we use this shell company without assets and start a new corporation. There was an oversight at that time by this lawyer, as well as the companies branch of the Ministry of Consumer and Commercial Relations.

But I carried on operating this company thinking it was a bona fide corporation. I was paying taxes, land transfer tax and so on. In 1984, we learned from, I believe, the Ministry of Consumer and Commercial Relations that this company had in fact been dissolved in 1978. The junior assistant of my lawyer, who was now a district court judge, took the matter in hand and started correspondence, and we are here today, five years later.

Mr. Keyes: I just want to follow that, my point being that surely you yourself were aware that the company no longer existed because you were the person who asked that the company be disbanded. So rather than trying to put it over to the lawyer, I want to suggest that, as the principal of the company, you yourself were aware that you had asked for it to be dissolved.

Mr. Gosselin: Yes. At the time of the dissolution, I was not a shareholder. I was a director. When I asked for a new company to be incorporated, there was the legal jargon involved in getting a new corporation. I did not know any of those matters. I presumed that everything had been done right.

Mr. Chairman: Any further questions? Seeing none, thank you. We are dealing with Bill Pr43, An Act to revive I. Gosselin & F. Camiré Developments Limited and to change its name to Northern Frontier Develop. Ltd.

Sections 1 to 4, inclusive, agreed to.

Preamble agreed to.

Title agreed to.

Bill ordered to be reported.

#### CITY OF LONDON ACT

Consideration of Bill Pr74, An Act respecting the City of London.

Mr. Chairman: There will be change in the agenda. We will deal with Bill Pr74 next. Mr. McCague is substituting for Mrs. Cunningham to sponsor this bill.

Mr. McCague: It is my pleasure to introduce Bob Blackwell, a city solicitor for London, who will tell you a little about Bill Pr74, An Act respecting the City of London.

Mrs. Cunningham apologizes for not being here, but she bought a ticket for London and ended up in England.

Mr. Keyes: If you believe that—

Mr. Chairman: It may be true.

Mr. Blackwell: This is a rather short bill, so I do not really propose to go through it section by section unless you direct me to do so.

The bill would empower the corporation of the city of London or its council to do two things. It would empower the corporation to pass bylaws, first, to regulate persons who tow motor vehicles, and second, to regulate persons who store motor vehicles.

Beyond that, it would also enable the corporation to deal with a specific problem were are encountering; that is, what we call bait lots, where the public are invited to park for a fee on a lot and believe, because of the presence of parking meters or other types of equipment, that it is a municipal lot. They find that when the time ticks over they are immediately towed away and they experience great difficulty in retrieving their motor vehicles.

What we are addressing in this bill is a proposal that the towing would be permitted, but the situation would be such that the vehicle would have to be surrendered if the car had been parked for less than a period of 24 hours. The towing operator or storage operator would nevertheless have his right at common law to sue or take proceedings to obtain payment, if payment is not made at the time of the vehicle's return.

There is provision as well for suspension of licences on a hearing and the revocation of licences in the format that is generally applied in the case of municipalities.

That is the bill in a nutshell.

Mr. Chairman: Perhaps before we open the floor to questions, we can hear from Mr. Polsinelli on the ministry's position.

Mr. Polsinelli: The government has no objection to this bill proceeding.

Mr. Smith: Mr. Blackwell, is this bill in response to—I think I read this in the paper—a tow operator taking vehicles quite frequently? Is this what this is in response to?

Mr. Blackwell: We do have a rather high-profile tow operator in the city. Of course, there is no specific tow operator mentioned in the bill, and it would apply to anybody, but there is a rather high-profile person who makes no bones about the fact that his revenue is derived largely and significantly from the towing of motor vehicles. He has told everyone from the Treasurer (Mr. R. F. Nixon) to the wife of the mayor of the city of London to out-of-towners, everybody. He shows no preference. He is very fair in that respect. He tows anybody.

Mr. Keyes: Fair and equal treatment, they call it.

Mr. Blackwell: Fair and equal treatment.

Mr. Smith: He literally just drives into a parking lot, and if he sees a meter that has ran over, a violation, he picks the car up? Is that the way he works?

Mr. Blackwell: He is more refined than that. At one time, he employed people on bicycles with two-way radios. They monitored the parking lots and were able to radio tow trucks which were just circling in the area. We understand that his tow truck operators are paid on a commission basis, so the more cars that are towed in a particular time, the more money they make. It is a rather aggressive operation.



Mr. Smith: If we were to pass this bill—and I do not know at this time what we are going to do—would we be interfering with free enterprise? Is that a safe statement to make?

Mr. Blackwell: I would like to think that what you are doing is introducing an element of fair enterprise and that it would be a balance between what is in the public interest and what is in the private interest.

1020

Mr. Pollock: I take it this person is acting on his own; the police have not contacted this tow operator. If a police officer or the parking attendant comes along and sees a meter where somebody is overdue, he normally calls or writes out a ticket. In this case, this chap is acting on his own. Is that right?

Mr. Blackwell: That is correct.

Mr. Kormos: I am confused about that. Surely the owner or operator of the lot has encouraged the tow operator to do what he is doing; that is to say, to clear the lot of improperly parked vehicles.

Mr. Blackwell: Yes, that is correct.

Mr. Kormos: So the owner of the lot is part and parcel of this whole scam or scheme?

Mr. Blackwell: Yes.

Mr. Kormos: The other concern is with section 4. Would that not prohibit even the legitimate scenario? We have to assume that there are at least some legitimate scenarios wherein cars are improperly parked and legitimately towed at the request of the property owner. This bars the person towing and storing the vehicle from effecting his physical lien, short of its being parked for more than 24 hours or held in storage for more than seven days.

Really, from his point of view, assuming that it is the rare, legitimate towing and subsequent storage of the vehicle, especially if it is an out-of-town vehicle, you say using civil remedies is highly unlikely to ever permit him to recover his legitimate costs in towing and storing. If you are regulating the fees for towing and storing, as I say, I am concerned about section 4 and the impact it would have on a legitimate operation.

Mr. Blackwell: In that regard, section 4 is not a blanket prohibition. I think there are two points to be made about section 4. First of all, it only applies in the case of parking lots to which the public has access by invitation or a right by payment of a fee; it does not apply to private property. So in the case of private property where somebody does not want the public parking, then the rights that prevail now would continue to prevail.

The second point to be made about section 4 is that the lien right is only interfered with where the vehicle has been parked for a period of less than 24 hours, so that if a vehicle goes into the second day and is towed away, then the rights that exist now would continue to exist.

This is merely intended to address the quick tow; in other words,

somebody who goes in, perhaps pays for what he thinks is an hour's parking, comes back an hour and five minutes later and finds that his car is gone. That really is the situation we are attempting to address.

We are not attempting to address abandoned cars, where somebody goes in and does not come back for two days or five days and the vehicle is towed after that period of time. In that situation, the rights that exist now would continue to exist and would not be interfered with by section 4.

Mr. Kormos: As I read it, the section says "parking lot or other parking facility to which the public by right or invitation has access, whether on payment of a fee or otherwise." What I am questioning then is the tackle shop that has six parking spots available for its customers and that is grossly inconvenienced by either residents or other business people using that parking lot for their own private parking.

That would seem to me to be a parking lot that falls within this definition, because it is certainly nonpayment of a fee. Those people would have a strong interest in being protected and making sure that improperly parked cars are not there. They would have a restricted number of spots. I am seeing that scenario as falling within section 4.

Mr. Blackwell: That is correct; it would. But in that particular situation, the owner of the tackle shop would still be able to have the vehicle towed away to free up the space for legitimate use of it by his customers. However, the person towing the vehicle away or the person storing it would not be able to retain the vehicle and say to the owner: "I am not going to release it to you until you pay me the towing fee, the storage fee, a compound fee, and if you come after hours an after-hours fee. By the way, the total is \$125. Unless you pay that, I have a lien and I am going to detain your car. I have power to sell it because I have a lien."

I guess from the city's standpoint, that seems to be so heavy-handed. We understand and we want to preserve the right of owners of property who have parking spaces allocated for their customers to be able to have those parking spaces freed through the towing away of vehicles. But we want to deal with the situation where the towing operator or the storage operator then in fact ransoms the car for the owner to get it back.

Mr. Kormos: I have been there. I know the feeling. Perhaps it is a rarer situation, but it is a gross impracticality for an operator to have to sue in small claims court or wherever, particularly to sue an out-of-towner, when there has been a traditional lien against a vehicle in these types of circumstances. I understand what the solicitor is saying, but at the same time, this seems to create a gross situation of unfairness to the operator who is towing in the situation we have just been talking about, where he has not got a snowball's chance in hell of collecting his money if it is an out-of-towner. If you are regulating fees and opening hours of compounds, that would seem to resolve the problem.

Mr. Blackwell: If you will permit me another comment, our view of the law at the present time—although I understand there is a government bill before the House dealing with liens—is that a tow truck operator or storer of vehicles does not have a lien. That is our view of it. I suppose that is open to dispute.

Putting that aside and going back to our high-profile operator in London, he quite aggressively goes into small claims court. He advised me that



he just accumulates 10 claims at a time. He goes in and pumps them all through. He gets default judgements. He has a great track record as far as collections go. It does not matter to him whether the person is an in-towner or out-of-towner. We have living proof that a towing operator and storer can recover money that is owing for the towing and storage of vehicles.

Mr. Chairman: I suppose if you do it in volume, it pays. A small operator may not have the volume to justify the court time.

Sections 1 through 7, inclusive, agreed to.

Preamble agreed to.

Title agreed to.

Bill ordered to be reported.

1030

#### UKRAINIAN EVANGELICAL BAPTIST ASSOCIATION OF EASTERN CANADA ACT

Consideration of Bill Pr83, An Act to incorporate Ukrainian Evangelical Baptist Association of Eastern Canada.

Mr. Chairman: The next item on the agenda is Bill Pr83, the Ukrainian Evangelical Baptist Association of Eastern Canada. Mr. Kozyra is the sponsor.

Mr. Kozyra: It is my pleasure to introduce to you Daniel Ciona on my immediate left, and on the far left, Reverend Tymciw, regarding Bill Pr83, the proposal to incorporate Ukrainian Evangelical Baptist Association for Eastern Canada.

Mr. Ciona: Reverend Tymciw is the secretary of our association. I am the treasurer. The president is not here today. He would be here but he is on an extensive tour in Australia representing this organization. I want to thank you for proceeding with the bill so far, especially the legislative staff who had some objections to the bill which I will explain later. But they carried on to the point where we are talking about the bill today. They were very courteous and helpful despite all the questions they raised with me.

The big question is, why a private bill? I will try to outline this in some detail. It started off back in 1987. There were approaches made to solicitors and to ex-MPPs simply with the idea, do you think we can have a private bill? I know there were draft copies of the private bill distributed at the time.

All the advice at that time—mind you, it was free advice, not paid-for advice; it was volunteer solicitors and so on—said "Certainly, present the bill," and it would pass in the normal course of events. We were sidetracked somewhat. We are not complaining about it. We did not go to a solicitor's office and say: "We want to incorporate. What is the best way?" He might have said to us: "You do not have to go by private bill. You go via the Corporations Act." That is why we are here to that extent.

Who we are: We are an organization of approximately 1,000 people, not dues-paying people but people who would contribute and take part in association activities and so on. It is broadened to a much greater group when

you talk about extended families. Exactly how many, I cannot tell you. There are congregations in Windsor, St. Catharines, Hamilton, Niagara Falls, Ottawa, Peterborough, the Brantford area and various other rural communities I will not name at this point.

Again, why the private bill? Really because we are looking for a bit of prestige, profile and recognition. The Ontario government in the past has shown a sensitivity to minority or ethnic groups and other kinds of groups. Although it is really a question whether Ukrainian society at the moment has not been assimilated—the immigration of 1928 and right after the Second World War has practically been assimilated, but we feel the private bill will establish a bit of prestige and profile so that some of these may want to take part and may be more interested in donations of money or kind.

What do the donations go for? Basically for two things, to preach the Judaeo-Christian gospel and charitable assistance to the poor, needy and individuals such as that. Those are really the two aspects of the association goals and objectives.

Second, you will recall that I said we started this in 1987 because we were to have a highlight in 1988. Some of you may remember there was a celebration of 1,000 years of Christianity in the Ukraine. This was going to do something for us, give us a little profile and recognition. Obviously it is 1989 now, so that cannot happen, but that was the other reason for it.

I am prepared to answer any questions, if you have any.

Mr. Chairman: I think before we get into questions, we will first hear from the ministry. Do you have any particular comments except those that were offered by legislative counsel?

Ms. Levine: If there are any questions.

Mr. Chairman: Legislative counsel perhaps could address the committee and outline the concerns they have with respect to this bill and some of the aspects you have already identified.

Ms. Mifsud: Thank you. I enclosed the letter to the chairman setting out my main concerns. I will just reiterate the three. One of them Mr. Ciona has mentioned, that it is perceived as being more prestigious to have a private bill; therefore, if one religious organization has it, we can anticipate many more of the same type.

The second point is that the private bill is not required. They can use the normal corporate procedures, which I understand cost less than \$400, to achieve this. So they have taken a far more expensive route. The time of the Legislature should not be taken up on matters that can be attended to under general corporate statutes.

Lastly, if they require amendments to their bill, if there are any changes in the future, they will have to come back for another private bill, which again will have to go through the same expensive process.

Mr. Chairman: Are there questions of the applicants?

Mr. Smith: Just for clarification, did you say they could really do what they wanted to do in another area and accomplish what they want?



Ms. Mifsud: I have checked with companies branch. They could see no reason why they could not incorporate under the Corporations Act, which is a nonprofit organization's method of incorporating much more cheaply and much more expeditiously than this process. Most other church or religious organizations recently have done that. In the old times, of course, that method was not available. There are some examples on the book, old examples, where religious organizations are incorporated by special act, mainly because these other procedures were not available.

Mr. Smith: Then I ask the group if it feels there could be amendments in the future it may have to deal with. Would you prefer now to go the other route or do you still want this private bill to pass if the committee sees fit?

Mr. Ciona: We would like to see the private bill.

Mr. Chairman: So you are not worried about amendments in the future that would have to come back to this committee.

Mr. Ciona: The organization has been in existence 36 years. We have operated this long without a bill. I cannot see an amendment coming through for very many years. As far as cost goes, we have already spent all the money. Also, with other organizations, if other organizations want to spend the time and money and the effort to do what we did, I guess that is their business. I certainly cannot see amendments further down the line.

Mr. Pollock: What is the difference in cost between going this way and going the Corporations Act route?

Ms. Mifsud: I cannot give you an exact figure, but I believe incorporating is somewhere around \$300, and I think the cost of this is between \$1,000 and \$2,000 with printing and advertising costs and application costs.

Mr. Pollock: And going this route is supposed to be a little more etched in cement? Is that what I am taking from the conversation here?

Ms. Mifsud: I am sorry. I did not understand.

Mr. Pollock: Etched in cement, a little more concrete, by going this particular route?

Ms. Mifsud: No, I think it was just misinformation, the way they proceeded. Right now, I think the only benefit to the applicant is a little more prestige it would have over other organizations that had gone the other, more usual route.

Mr. Keyes: Just a comment to the representatives of the community: I want, first, to commend them for the concept of wanting to incorporate their organization and the objects within the bill as stated are very admirable. It has been my good fortune to have been closely connected with the Ukrainian community, as small as it is, in the city of Kingston, for some years, through their festivals and religious feasts etc. and the good works they do among themselves. In fact, I will also have the pleasure later this month of representing the province at a major gala for this same community in the O'Keefe Centre.

I think what we have to look at is that surely in life, an organization

is respected and known by the deeds it does rather than the methods by which it organizes itself. Therefore, if we were not able to provide this organization with the means of achieving its goal of incorporation through existing legislation, to me a private bill might then be appropriate. But we do have the means whereby it can incorporate to provide protection for itself and its members under the Corporations Act.

Therefore, I find it not compelling to use what seems to be one of the major reasons, the prestige and profile the organization will be given by benefit of a private act. I have not yet heard reasons to convince me why the private act should go forward, when there is a reasonable means, regardless of costs; I think perhaps if we add on some solicitor fees, it may cost a bit more than \$300, from some past experience.

1040

Unless I hear more from them to convince me, I would have to say I see no reason for it, because private bills should be reserved for providing opportunities to do those things that are not covered by laws. I want to ask the question why the route under the Corporations Act is not considered adequate by this congregation.

Mr. Chairman: Mr. Ciona, would you like to comment on that?

Mr. Ciona: The main reason has to go back to 1988 when we thought it would be a good thing for the parliament of Ontario to recognize in some way the 1,000 years, or millennium, of Christianity in the Ukraine, because there are a lot of Ukrainians or individuals of Ukrainian descent in Ontario and Canada. That would be a recognition of that. That is the only answer I can give you.

Mr. Chairman: Does that satisfy you, Mr. Keyes? Do you have any follow-up?

Mr. Keyes: Just simply, I have to look at it from basically the role of this committee. As I understand the role, it is to try and provide opportunities for organizations, individuals, municipalities, etc., to achieve aims that cannot be achieved through existing legislation. Despite the merit of trying to recognize the millennium of Christianity in the Ukraine, I do not find that adequate for me to step aside from the rules I consider govern this committee.

Mr. Chairman: Thank you. Mr. Daigeler?

Mr. Daigeler: Actually, it is on the very same point. Obviously, I think this is a very worthwhile objective in itself. I think recognizing the millennium can be done and has been done in other ways. I would like to hear again from legal counsel.

I think the main objection you have is that this would set what you perceive as a very dangerous precedent, because other groups would use the same route and the committee could become burdened with many of these. Is that the main reason you have serious difficulties with this procedure?

Ms. Mifsud: In terms of the committee's time, the committee has constantly made comments about, "Why is government legislation not amended so we do not have to hear these types of applications on corporate revivals?" There have been constant comments by the committee to cut down on the number



of applicants. I think by approving this you will open the doors to other applications from those who think this is a more prestigious route to go: "We have similar objects. We are also a religious organization. We are charitable and we should use the same method."

There are a few other administrative problems. If they should ever dissolve, it is very rare that they come back to pay the money to have a private bill repealing the corporation, whereas under the Corporations Act it is a much simpler process. Although most organizations think they do not need changes, you often find they did not anticipate all the powers they needed when they could operate under a corporate framework. They often do come back for changes and then it is another private bill. So my main concern is the committee's time.

Mr. Kormos: In terms of the costs that have been spoken of, where is the watershed point? That is to say, how much of that cost apportionment has been consumed already?

Ms. Mifsud: At this point, I believe that because the advertising is one of the major costs, they have paid quite a portion of the cost. They would not have to pay for the reprinting of the bill. I really do not know the exact amount that would cost. It depends on the length of the bill. It would be a couple of hundred dollars, apparently.

Mr. Kormos: I appreciate that argument and I appreciate the precedent argument, but the fact remains that this committee deals with applications, if I can call them that, one at a time and weighs them.

Mr. Keyes makes a strong point about a rationale for the bill, and that has been provided. The applicant has been very candid in saying the organization seeks the prestige that is associated with being in Statutes of Ontario 1989. The fact is, it is realistic. I will be candid and say perhaps I am a little partisan because my connection with Ukraine and Ukrainians is as a result of where my grandparents came from, not necessarily so much by being thrust into the community or joining the community but by being there.

I am prepared to support this bill, notwithstanding what has been said. It would appear that the watershed point has been passed in terms of the accumulation of cost or the expenditure. Precedent and other applicants may well refer to what this committee does if the committee grants or approves this bill, but it remains that each situation has to be dealt with one at a time, so it is not a binding precedent and so the precedent factor does not concern me as much. I recognize that the bill achieves a purpose that other routes cannot—that is to say, lends prestige and distinction to this organization—which I am prepared to endorse.

I think it can safely be approved without developing the dangers that are spoken of, especially if one talks about cost. It would appear that the costs remaining to be paid are modest compared to what has been invested already.

Mr. Pollock: My connection with the Ukraine is mainly in the way some people pronounce my name.

My question is for legal counsel again. This is not the first time this has happened here, though, is it?

Ms. Mifsud: It is the first time in the last 10 or 20 years, yes.

Before that, I do not believe the procedures were set up to do it administratively. They used to have to come for a private bill, but since the corporate procedures, I could not find an example in the last 15 or 20 years.

Mr. Pollock: Maybe not in this particular case, but it just runs in my head that I carried a bill for the Honourable John Turner when he was Speaker of the House—of course he could not have carried the bill—with regard to a pentecostal school in the city of Peterborough, a bible college or something like that. I cannot give you the whole breakdown of the thing right now, but that might be a little different. That was a piece of property.

Ms. Mifsud: If they needed a tax exemption they would have to come this route or if they wanted to operate a school they would have to come to a private bill, because under our legislation they cannot without a private bill. It really depends on the circumstance. If we are just incorporating a church group per se, there is no necessity, and there have been no examples in the past 10 or 15 years.

Mr. Pollock: Okay, we opened up a new area there. Are we doing this for a tax exemption?

Ms. Mifsud: I believe churches are automatically exempt under the Assessment Act. The Ministry of Municipal Affairs people can clarify that, but I do not believe it is a tax exemption problem at all.

Mr. Pollock: Fine. That is what I wondered.

Mr. Smith: Under section 3, "The objects of the corporation are," one of them is mentioned as "works of education." Is there possibly more involved here than just prestige?

Ms. Mifsud: Their objects are very wide, and we had a number of comments from ministries saying that if they are going to do these things—these are very old objects. I do not think many churches are running public hospitals or industrial institutes. For instance, the Ministry of Agriculture and Food said it does not want it running any of the things conflicting with its own programs.

A number of these objects are very wide, but I think they have told Mr. Ciona that if they ever did want to run these, they would be subject to normal government legislation and normal government grants. Although we have left them fairly broad, they have not asked for any specific provision and they are not intending, I do not think, to operate any colleges at this point. If so, they would have to check with the Ministry of Colleges and Universities in that regard. There is someone here from Colleges and Universities, if you want to ask more questions.

Mr. Chairman: Are there any further questions? Seeing none, this is Bill Pr83, An Act to incorporate Ukrainian Evangelical Baptist Association of Eastern Canada.

Shall sections 1 through 7 carry?

Mr. Keyes: No.

Mr. Chairman: All those in favour of sections 1 through 7 carrying, please raise their hands. Two. Those opposed? Six.



Sections 1 through 7, inclusive, negatived.

Mr. Chairman: I guess I have to ask the same question on the preamble.

Shall the preamble carry? Obviously, no. Same vote.

Shall the title carry? Same vote.

Shall the bill carry? Same vote.

Shall I report the bill to the House?

Mr. Keyes: No.

Mr. Ciona: In spite of the negative vote, I want to thank you. There are 11 elected members here. The idea was that we get before the elected members and, whatever their decision, we of course have to abide by it. We had our hearing. Thank you very much.

Mr. Chairman: Thank you. I hope you understand the reasons for it.

We have quite a contingent for the next bill. I am wondering if we could have a five-minute recess and reconvene.

The committee recessed at 10:50 a.m.

1055

#### COUNTY OF LANARK ACT

Consideration of Bill Pr78, An Act respecting the County of Lanark.

Mr. Chairman: The next item on the agenda is Bill Pr78, An Act respecting the County of Lanark. The bill is being sponsored by Mr. Wiseman, who will introduce the delegation.

Mr. Wiseman: Thank you for hearing Bill Pr78 for us today. I would like to introduce the person on my right, Mayor Laurence Lee. He is the head of the steering committee on Smiths Falls and area waste management study, and has been for almost five years. Next to him is Dennis Wood, the lawyer representing the steering committee. Just behind Dennis is Mary Bull, another lawyer with the same law firm. On my extreme right is Doug Sexsmith. He is the consultant for the group.

The group has met for about five years. Of the 16 municipalities within the county, 14 have voted in favour of the bill and of the county taking over, plus two other municipalities, the separated town that Mayor Lee represents and the township of South Elmsley. They are well represented here today.

I will turn the meeting over to the mayor and the chairman of the steering committee or the lawyers to present the bill and answer any questions.

Mayor Lee: I would like to introduce the members at this time. From the township of Ramsay we have Doug Stewart, the former reeve; from the township of Montague, Leo Jordan; from the township of North Elmsley, Laurie Duncan; from the township of North Burgess, John McParland; from the township of Beckwith, John Sheil; from the town of Perth, Mayor Lowell Yorke; myself,

Lawrence Lee, mayor of Smiths Falls; from the township of Bathurst, Larry McPhee; from the township of South Elmsley, Gerald Davis and Robert Taylor; from the township of Pakenham, Harry Barr; from the town of Almonte, Mayor Dorothy Finner; from the village of Lanark, Lloyd Campbell; from the township of Darling, William Racey; from the township of Drummond, Willard Shaw; and from the township of South Sherbrooke, Earl Van Alstine.

From the county we have John Chaplin, the warden, R. B. Strachan, county engineer, and Keith Coulthart, administrator/clerk-treasurer. Also from the county, but not on the committee, we have Ray Ritchie, deputy reeve of South Sherbrooke, Alec Bell, deputy reeve of Beckwith, and Ron Coutts, deputy reeve of North Elmsley. We do have a very good representation from Lanark county and also from the town of Smiths Falls and South Elmsley, which is in the county of Leeds.

Mr. Chairman: Do you wish to make an opening statement at this time?

Mayor Lee: Yes. This waste management study was formed in the early 1980s. The group has been working with the Ministry of the Environment to develop this solid waste master plan for the county. After four years of deliberation, we came to the conclusion that the most appropriate level of municipal government to operate the solid waste management system would be the county government.

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Our study has invested a considerable amount of time, money and energy in the study process. We hired an experienced law firm and an experienced consultant.

Last summer, 14 local municipalities, our town of Smiths Falls and the township of South Elmsley agreed to the arrangement to give the county the responsibility for the waste disposal. It was a considerable achievement, as you may well appreciate, to have the agreement of 16 local municipalities plus a separated town and a township from another county. I believe the Ministry of the Environment supports our initiative in this endeavour.

I feel this government should support the co-operative initiative these municipalities have taken to solve their waste management problems. We are not asking for the province to take over our problems, but just looking for your support and your help at this time. It is our feeling that if this private bill is not passed or does not come into force in this session of the Legislature, it will be a devastating blow and the waste master plan process could possibly come to a halt. As well, it may be difficult to keep the group together if this bill is not passed.

This government should send a message to the people of Lanark county that it supports the environmental assessment process and responsible planning of the very real issue of waste management.

I would like you again to consider the 14 communities, the separated town and the one community in another county all binding together. I think it certainly deserves your support.

Mr. Chairman: Perhaps before we open the floor for questions to the delegation we could have the ministry state its position, and then we can have questions. I understand there will be other people speaking who are opposed to the bill. We will hear from them, and we will be giving you an opportunity to come back.



Mr. Wood: I do have a number of comments, but it may be helpful to hear from the other people and comment in the context of those.

Mr. Chairman: You certainly will be given an opportunity to do that.

Mr. Polsinelli: I must say initially that the ministry and the government compliment the people from Lanark county, particularly the county waste management committee, for having taken the initiative and the leadership it has shown in terms of dealing with the waste management problems in Lanark county.

I should also compliment Mr. Wiseman for his persistence in dealing with me on this matter. I know that at every opportunity, he has talked to me about the bill, the merits of the bill, the merits of the good people of Lanark county and the hard work they have been doing in the past five or six years in dealing with this very difficult issue.

However, we have a problem as a ministry in supporting this particular bill, Bill Pr78. The most difficult problem we have is that we have passed public legislation, Bill 201, which establishes on a permissive basis a county waste disposal system for Ontario. We feel that the public bill has been developed to apply to all counties in the province, and that on an issue as complex as waste management there should be a consistent legislative framework across this whole province. Bill Pr78 creates a special legislative framework for Lanark county which is very different from the public bill we have before us in the Legislature.

I should point out that Bill 201, which is the public bill, has received the endorsement of the Association of Municipalities of Ontario. They have also indicated that, with a few clarifications, they would like to see speedy passage of that bill through the Legislature.

In terms of the ministry opinion of the private bill, Mr. Lee has pointed out that the Ministry of the Environment supports his private bill and in a rough sense I guess he is correct. I would like to quote a bit from the preliminary response we received from the Ministry of the Environment. This is from Mr. Crump, who is from the waste management policy section of the Ministry of the Environment. He says, "If the public bill respecting county authority does not proceed, on balance, the Lanark bill as drafted would be a positive step for the waste management master planning activities currently under way in the county."

I think the Ministry of Municipal Affairs echoes that type of concern, that in the absence of anything else, Bill Pr78 is better than nothing. We do, however, feel that the public bill, Bill 201, is a superior bill.

The Ministry of the Environment further goes on to state:

"As a matter of principle, however, we would much prefer that Bill 201 become the enabling legislation for county authority and that we avoid a situation where differing approaches develop in response to local legislation. A uniform provincial approach, tailored to local needs within the confines of Bill 201, is, in our opinion, a far superior approach."

This is from Mr. Crump, who is the acting manager of the waste management policy section of the Ministry of the Environment. Mr. Crump also indicates that their initial concerns with Bill Pr78 have been resolved, although in an administratively messy way. But they have been resolved.

With respect to some of the concerns from the Ministry of the Attorney General, we have a letter from Mr. Shipley who is counsel for that ministry. He reiterates the Ministry of the Environment's position that they would much prefer to see public legislation dealing with this very complex issue rather than a hodgepodge series of private bills dealing with individual municipalities.

Mr. Shipley says in the second paragraph of the letter we have from him, "I would expect that the Ministry of the Attorney General would still strongly prefer not to have both public and private legislation dealing with the same matters."

Mr. Shipley makes a further comment that I think I should bring to the committee's attention, in the last paragraph of the letter we have from him. He says: "I must emphasize that due to the haste with which this matter has proceeded discussions in the Ministry of the Attorney General have been restricted to the staff level. It has not been possible to consult senior management officials or the Attorney General."

I should point out also that last year one of the signatory municipalities to this agreement, the township of Bathurst, passed a resolution endorsing the private bill in principle. They recently had an opportunity to compare Bill 201, which is the public legislation, and Bill Pr78, which is the private legislation. On February 7, approximately a week ago, they passed a resolution—the members of the committee have a copy of that resolution before them—indicating that they no longer support the private bill to which they are a signatory and in fact are in support of Bill 201.

We feel, through the Ministry of Municipal Affairs, that if the other municipalities were to take the time to compare the provisions of the public legislation, Bill 201, and the provisions of their private legislation that they have before us today and to analyse the two bills and compare how they would affect in relative terms their county and their municipalities; that if they continue showing that leadership they have shown in the past and now take it one step further and compare the two pieces of legislation, we are of the very strong opinion that they would favour the public legislation. That is our opinion; it remains to be seen as to what they do.

I have been asked to ask for a recess of about two minutes to compare with staff for a second.

Mr. Chairman: All right. We will just wait a moment or two.

The committee recessed at 11:08 a.m.

1110

Mr. Chairman: The committee will reconvene. Mr. Polsinelli, carry on, please.

Mr. Polsinelli: As a consequence, then, I would say that at this point the Ministry of Municipal Affairs and the government cannot support the private legislation. However, we have had some last-minute phone calls from the Ministry of the Environment, and what I am going to be asking for today is a deferral for one week in dealing with this issue.

The deferral is for the purpose of two things. First, I would like, if



possible, the local municipalities to take a look at the public legislation, our Bill 201, closely examine it within the next period and see whether they still favour their private bill as compared to our public bill. Second, we would like to have some further negotiations with the Ministry of the Environment in dealing with the private legislation.

As I have said to counsel already, my personal approach to this whole thing is that if we have 16 municipalities in a county that have agreed to a certain package to deal with waste management in their particular county, then we as a government should be as accommodating as possible within the parameters, obviously, of our public legislation.

So I am going to be asking for a deferral for a one-week period, in order that we can consult again with the Ministry of the Environment and the applicant. Those are my submissions.

Mr. Chairman: Before we deal with any issue of deferment perhaps Mr. Wood would like to comment on Mr. Polsinelli's statement.

Mr. Wood: My clients have put in a great deal of effort over a long period of time and this matter is of considerable importance to them. I respect the fact that Mr. Polsinelli has indicated that there are some concerns in regard to the private bill and the public bill and the interaction between the two. I am hopeful that we might be able to satisfy Mr. Polsinelli and others that the two can coexist. Therefore, I think his suggestion that the matter be put over for a week and that we come back before this committee next week is a reasoned response to the matters that are before you.

Mr. Chairman: All right. I have two members who would like to ask questions and what I would like to do, if the committee agrees, is to let you ask the questions. I would then like to hear from those who may be opposed to the legislation. We should hear that as well before we deal with the issue of deferment. Mr. Smith?

Mr. Smith: First of all, I have to commend you as a group on what you have done and, I presume, the persistence that you have shown and taken over a good long time. I had the opportunity of going around with the committee to visit the 26 counties that are left in Ontario, mainly in eastern, central and southern Ontario; that is where they all are. We found that when we listened to everybody in all of those counties, the vast majority of them felt that the county level of government should be the one that is responsible for waste.

I know it is a horrendous problem. It is coming down on us very quickly, how we are going to deal with it. I suppose I can say to the people who object to what you are doing here that we have to face reality. There are places that will accept waste and there are places that will not. But after listening to what the government representative has said, I suppose we certainly have to look at that.

But I do not want to take anything away from you as a group and what you have done, because it is likely your persistence that has got the government and all the rest of the people in Ontario to this point. I hear—the date is somewhere around 1992-93—that we are going to have problems that are right now almost beyond our comprehension.

I think you have done an excellent job. I presume that if you go with a private member's bill in this case, then another 26 counties may want to do

the same thing. But I believe that government Bill 201 will likely encompass all of the things that you want. We hope that through time we can work out all of these problems; but I do not want to sit here and say that you have done nothing good for Ontario, because I am sure you have done a lot of good background in looking into these problems. I commend you for that.

Mr. Daigeler: I must say that this government has few priorities that are more important than waste management; it is in light of that that I would like to be as supportive as possible of this particular initiative. Obviously, this is something that we, as a government, and I think the opposition as well, are very interested in.

The people in the different townships and the different counties have to be congratulated for working on this matter. I find it very unfortunate that we are in the position of seeming to have to choose between one or the other, when all of us agree on the merit of the basic principle.

I am just wondering, first of all, whether one week's deferral is enough to settle the matter. Certainly I would be open to a longer time.

Second, with all the bills that have been introduced, I cannot remember when Bill 201 was in fact introduced. Have you had a chance to look at that and is there any reaction to that?

Third, I know it is very difficult to assess a time frame at Queen's Park, but is there any assessment by the ministry as to when Bill 201 might be passed? Are we looking at a prolonged hearing process again, or when do you reasonably expect Bill 201 to be passed?

Again, in substance, I really find myself very much torn. I understand what you are saying as parliamentary assistant to the Minister of Municipal Affairs. Obviously if there is a provincial bill in the process that would basically accomplish this purpose, it would be preferable to have that. But at the same time, we have all these townships working together. If there is a danger of that going down the drain, I surely would not like to see that happen.

I would urge all parties to come to some agreement. I certainly support your idea of deferring this, possibly even for a little bit longer.

Mr. Polsinelli: Mr. Daigeler has basically hit the nail on the head. He has covered most of the points. I must mention at this point the result of the County of Lanark Act and its initiative. One of the effects that has had is that it has moved government legislation along. You know how slowly government works at certain points, but as a result of the initiative that these people have taken, the government bill has moved much more quickly than it probably would have in the normal stages. It has been moved out of the study stages and is at the draft bill stage.

I am concerned, as you are, about the deferral period. I am not quite sure that we can resolve our differences within a one-week period. We would like to point out that we are trying to be accommodating, that we are trying to reach a consensus on how to deal with waste disposal in the province, particularly in the county of Lanark in this particular issue. Perhaps we could have some comments from the solicitor representing the county as to whether or not one week would be enough or whether we should perhaps extend that period of time somewhat.

Mr. Chairman: Could we hear your comments, Mr. Wood, on the deferral



Mr. Wood: I would like to stay with the week. We have accomplished a fair bit in the time that we have been dealing with this matter. I think we are dealing essentially with a question of policy here. I would hope that with the kind of good faith and enthusiasm that we have experienced from the various ministries in supporting us that we could find a way to do that at a policy level like that because we are no longer talking about language, I believe. We are talking about a simple question as to how one can perhaps find the way through the labyrinth here in a policy sense.

Another reason is, frankly, that I would like to keep this alive before the session ends. If we have a deadline of next week, it gets all of us working hard to try to get it back here in a resolved form in front of you and maybe get it done in this session.

Mr. Polsinelli: I just had a brief discussion with staff. They feel that one week is not going to be enough to resolve the issues and that we should somehow get a longer period of time than that. The group has now been working for a period of six or seven years. If we resolve our differences in the next few weeks, even though the Legislature is not in session, this could be reported back as soon as we come back. You could have a bill, in effect, within a two-month period. I do not think two months, in a period of seven years' working, is a great deal of time, and it would give us perhaps an opportunity to resolve our differences and try to come to some compromise on those points that we have.

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Mr. Wood: If the matter were set at a week and we are put on the schedule, and if it turned out that there was nothing useful to report to the committee, then it is a simple matter to tell the committee that and it would not go on.

Mr. Chairman: It usually would be a simple matter, but it is not, given the time of year that we are in. You have raised an issue. We were not scheduled to meet next week, as one example. We would be meeting only for this issue. Mr. Pollock, do you have a question?

Mr. Pollock: I just wanted to make a few comments. One of the things is that I would like to put on the record that I, for one, am not a big lover of landfill sites in the first place. I prefer that garbage be recycled or incinerated. The reason is that I have heard a member of this Legislature say that practically every well in the United States is contaminated now because the Americans had this policy of dumping everything in the ground. They think by doing that they are not creating any problems. Well, I believe they are.

Another member of this Legislature said to me that we should dump all our garbage in the big iron ore mine hole in Marmora. I said there was water in that. She said, "What hole in the ground hasn't got water in it?" We are right back to square one.

If you think that by doing that and contaminating our water courses, our underground water supply, you are accomplishing something any different from causing acid rain, you are just burying your head in the sand. After all, if you burn it and then it comes right down in the lake, what is the difference between that and letting it go directly into the water courses, the lakes and the streams of this province? So, as I say, I am not a lover of landfill sites in the first place.

Mr. Chairman: I think perhaps at this time, if we could ask you to

change seats, we will ask the township of Bathurst representation to come forward and we will hear from Mr. Denison.

Welcome to the committee. You have heard some comments. First of all, I would like you to address the issue of a deferral and perhaps give your comments on that. If you would like to make comments about the proposal itself, you can do that, and we will just throw it open to questions for you.

Mr. Denison: It seems every time I come down to this committee, either the bells ring or there is a request for a deferral. It is somewhat of an inconvenience for the contingent that is with me to travel down to Toronto repeatedly, as I am sure it is for the county representatives as well.

I have sitting here, Larry McPhee, who is a councillor from the township of Bathurst, and Geoff Mason, who is a representative of the Balderson and Area Community Association, which is in the area affected by one of the proposed sites for waste disposal in this study.

Let me say from the outset that it is not the position of the township of Bathurst to oppose the study or to withdraw from the study, or not to support the concept of the county's being the agency to deal with waste disposal management systems. The township of Bathurst strongly endorses that idea. In fact, the resolution that Mr. Polsinelli referred to earlier shows support of the proposed public bill in preference to the county's private bill.

I am not sure what the effect of deferral is. I have several prepared comments on the bill that was printed, but I also received this morning a series of amendments to the proposed bill. I have only had a chance to review them rather hastily. I suspect some of them may be improvements and answer some of the criticisms we have and some may not. I do not know. I really have not had a full opportunity to analyse those. From that perspective, deferral would help because we could consult and deal with that.

I have some concern, though, whether any reasonable sort of consultation with the constituent municipalities can occur in one week. You have difficulties meeting and so do members of municipal councils. To say they will be back here in one week with an analysis and comments understanding the ins and outs of Bill Pr78 as opposed to public Bill 201, I just do not think is reasonable or likely to happen in any effective way.

I think Bathurst council has had some chance to analyse the two bills as they are printed, although not the amendments. It has come to some conclusions. Initially, the township of Bathurst expressed by resolution, as to the other county townships, its support for the concept of the private bill to give the county of Lanark the authority to deal with waste disposal within the geographical area set out in the bill.

I do not think, though, that any of the townships involved here, other than Bathurst, have really done an analysis of Bill Pr78. In fact, I asked Mr. McPhee if he would consult with people in the various constituent municipalities to find out what their positions were with regard to the actual draft of the bill before your committee today. I should indicate what the results of those are, because you have heard from others as to what the support is.

I am talking specifically about support for the bill as drafted, not support for the concept of the bill but for the actual wording and nitty-gritty of the bill you are being asked to pass. It would give what I



think are some extraordinary powers to the county of Lanark, powers that are quite different than you find in similar public bills.

I understand that Mr. McPhee was able to contact a councillor from Montague. On the list here that I am given, he has either consulted with members of the council or the municipal clerk, as best he could find out, yesterday, what their position was with regard to Bill Pr78.

The township of Montague had supported the concept of the draft bill and probably had a resolution to that effect. The town of Almonte had not seen and council had not discussed or passed a resolution with regard to Bill Pr78 with the actual wording that is before you, although they certainly did support the concept of the county doing it. Similarly, York is here.

I do not think the town of Perth has a council resolution that has specifically dealt with a council analysis of Bill Pr78. The same thing holds true for Lanark village, Drummond, North Elmsley, South Elmsley and North Burgess. South Sherbrooke township, I believe, has a resolution supporting the bill. Smiths Falls, as has been pointed out, has a resolution supporting the actual wording of the bill. I presume they have done a detailed analysis of the bill and find it suitable.

The township of Beckwith has not had a discussion or analysis of the wording of Bill Pr78. Ramsay township has not had a council discussion of the wording of Bill Pr78 and its effect on them. Carleton Place has no council discussion or resolution analysing and supporting Bill Pr78. The town of Almonte has no council discussion, analysis or resolution supporting this bill.

The county of Lanark itself, while it certainly is supportive of the concept and powers, actually does not have a resolution that I am aware of supporting the wording of the bill at the latest minute, or the proposed amendments that are likely to be brought to this committee if it deals with it today or when it resumes.

In terms of the process and deferral, if all of those parties who are affected by this bill can be consulted, that is probably to the good, even though it is costly and difficult for all of the parties, including the smaller municipalities such as Bathurst.

I could tell you fairly quickly what my concerns are about the bill, as worded. I cannot comment on the amendments. In the event you defer and Bathurst is unable to reattend, I would like the opportunity to tell you what those concerns are rather quickly.

Mr. Chairman: All right. Mr. Denison, first I would like you to be aware of the fact that we only received the amendments this morning as well. We are at a bit of a disadvantage. Mr. Polsinelli would like to comment on some of your comments, I think.

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Mr. Polsinelli: Yes, I would. I must say that you sound like a government spokesman, sir. I think one thing that should be pointed out is that if Bill Pr78 gets passed, then those municipalities you have mentioned are locked in. They must participate in a county of waste disposal system, with whatever powers the private legislation gives the county. I think you

raise a very valid point that the individual municipalities should at least come back and say, "We support Bill Pr78 as worded."

Mr. Denison: Understanding what it actually means.

Mr. Polsinelli: Understanding what it means and by doing that, also taking a look at the public legislation that is before us. Quite frankly, those are certain considerations we had discussed in the Ministry of Municipal Affairs. It is something that concerns us greatly. It is also one of the reasons why I guess we should say that we were not wholeheartedly supporting the wording of Bill Pr78, while at the same time being torn by the approval of the concept.

Mr. Chairman: Mr. Denison, perhaps you could make your comments with respect to the problems you have with this bill. If there are questions, they can be asked now; it may be of assistance later.

Mr. Denison: I am going to make my comments on the printed bill and not so much on the amendments, although some of the concerns may be dealt with in the amendments. I may as well start right with the preamble; the preamble of the bill refers to "with the agreement of that...municipality."

I think the whole context of the bill tends to be that it gives the county rather extraordinary powers that take away the ability of the constituent municipalities to agree. It really gives the county power to say, "This is the way it is going to be," and in some cases, removes the right of appeal to the Ontario municipal board from the local municipality.

In the definition sections, the bill was structured so that the county and the local municipalities that subscribe to the bill—the subscribing municipalities. There are also some municipalities within Lanark that are not covered by this bill. There is no special provision for a host municipality.

In fact, it may be worth while to have optive sections that recognize that a municipality which is going to host a waste disposal management facility should have special recognition in the act and that the county can enter into special conditions with that. That can be implied elsewhere in the act, but I say it would be worth putting in specifically and it is not there.

Subsection 2(1) of the act, which is the definition for "waste management system," could be improved, I think. It does not make it clear that the system is subject to the approval of the Ministry of the Environment and an environmental assessment process under the Environmental Assessment Act, but it could say that.

Subsection 2(4) deals with a municipality that has an operating system that may or may not be brought into the county system. In fact, the way that system is structured would really force a municipality with a viable system that serves its residents either to bring the system into the county or lose the viable system.

In subsection 2(5), there is a provision for putting a charge by the county on the local municipality, even though it continues to operate its own systems and may not benefit. I understand the charge, the rate that would be brought in would not refer to the operation of a county system. But the subscribing municipality that had its own system and was not yet in the county system would be levied and pay rates for the capital costs of establishing the



county system and for the reserve fund to be built up to close a county system and perpetual care for it.

Subsection 2(11) should be interesting to Smiths Falls and South Elmsley. It really establishes a system for the county to force either of those municipalities to come into the system or to arbitrate it at the Ontario Municipal Board. Again, the tenor of the act is to force a local or subscribing municipality to come into the system whether it wants to or not. At least they have the right to go and fight it out at the Ontario Municipal Board, which is not there in other places.

Clause 4(1)(a) is one of the principal points I wish to make about this bill. I have had a discussion with Mr. Wood about this. He may have some positions that suggest my concern can be alleviated by an amendment, but let me tell you what it is. Subsection 4(1) says, "For the purposes of establishing a waste management system, the county may,

"(a) acquire and use land;"

Subsection 2 goes on to say, "Despite paragraph 84 of section 210 of the Municipal Act, the county may acquire land in a subscribing municipality for the purposes of this act without the approval of the subscribing municipality or the municipal board."

That particular wording is diametrically opposed to what is in the proposed public bill, every piece of legislation, every public bill, every regional municipality act and the Municipality of Metropolitan Toronto Act. The provisions in all of those acts that deal with acquisition of land by the region or Metro say the local municipality must consent to the acquisition and approve it. If they do not approve it, either the local municipality or the region has recourse to arbitrate it before the Ontario Municipal Board.

The effect of this act is to say that the county of Lanark can determine where it is going to acquire and use land for a waste disposal site and may do so against the wishes of the local municipality. That municipality has no recourse to go to the Ontario Municipal Board or anywhere for an approval. That is quite a significant difference from every piece of public legislation I am aware of.

Just for your interest, I have looked at similar provisions in the Regional Municipality of Durham Act, Revised Statutes of Ontario 1980, chapter 434, section 144. It requires approval under paragraph 84 of section 210 of the Municipal Act.

It is the same for the Regional Municipality of Haldimand-Norfolk Act, RSO 1980, chapter 435, section 127; the Regional Municipality of Halton Act, RSO 1980, chapter 436, section 137; the Regional Municipality of Hamilton-Wentworth Act, RSO 1980, chapter 437, section 149, and the Regional Municipality of Niagara Act, RSO 1980, chapter 438, section 178.

Section 132 of the Regional Municipality of Peel Act, RSO 1980, chapter 440, requires a paragraph 84 approval. The Regional Municipality of Sudbury Act, RSO 1980, chapter 441, section 67, requires a paragraph 84 approval. The Regional Municipality of Waterloo Act, RSO 1980, chapter 442, in section 169, requires approval under paragraph 84 of the Municipal Act.

The acts for Metropolitan Toronto and the regional municipalities of Ottawa-Carleton and York do not refer to paragraph 84, section 210 of the

Municipal Act, but let me read to you what the provision is in the Regional Municipality of Ottawa-Carleton Act. I will tell you that the provisions in the Municipality of Metropolitan Toronto Act and the Regional Municipality of York Act are similar.

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I am just finding the section. Section 181 of the Regional Municipality of Ottawa-Carleton Act, which is RSO 1980, chapter 439, provides first of all, in subsection 181(3), for the power of the municipality to acquire and use land for waste disposal purposes. Subsection 181(8) says:

"No land shall be acquired under subsection (3) and no bylaw shall be passed under subsection (4) without,

"(a) the approval of the area municipality in which the land is situate, which approval may be granted upon such terms and conditions as may be agreed upon; or

"(b) failing such approval or agreement, the approval of the municipal board."

The next subsection goes on to set out the procedure for having that brought to the board.

The reason this is so important, especially for a small municipality like Bathurst, which might be the host municipality for this facility, is that it has to have the ability to negotiate something that is reasonable for its residents and taxpayers if it becomes the host municipality. If that agreement cannot be negotiated, it has to have recourse to the Ontario Municipal Board. Bathurst is only two votes on county council. It is in a minority position, not that any of its friends in the county would ever gang up on it, but the potential is there.

I sense I am probably running out of time. I will not go through the rest of the bill except to say there are a couple of other sections that bother us. In particular, I think the sections that deal with the vesting and transfer of funds could be improved somewhat. For example, there is wording in clause 11(3)(d) which says:

"All rights and obligations and all personal property of the subscribing municipality pertaining to or exclusively used for the collection and removal of waste in the subscribing municipality or defined areas therein to which the bylaw applies are vested in the county without compensation."

My understanding from Mr. Wood is this means that if the county takes over some assets that are subject to debentures and so on, it is not going to compensate for the debentures; it is going to take them over. He relates that clause (e) then goes on to provide how the municipality is protected in the event the county does not pay the debenture.

However, the possibility is still there that if a municipality has a dump truck and a front-end loader that it has paid its debentures on and owns and is using in a waste facility, the county has the right to take that over without compensation. At least, that is how the act appears to me to read. That is what I would be fearful of in advising Bathurst. That is an example, I think, of the extraordinary confiscatory type of approach this act takes.



The final one that perhaps expresses the extraordinary aspect of this is section 14. This has been reworked substantially in the proposed amendment and it may be better, but as it is worded in the printed act, the county—sorry, it is section 13 I want to deal with first. Section 14 follows on it.

Section 13 gives the county officer the right to enter land to carry out tests, make studies and so on with regard to establishing where a waste facility should be. This is not totally unreasonable, perhaps. However, section 14 goes on to provide for obtaining a warrant to enter those lands in case the land owner objects to the party's entering. In case they think the party might object to obtaining a warrant, it provides that it can be done by going directly to the judge, without any notice to the person being affected.

The proposed amendment seems to take that section out, but there is nothing in the proposed amendment that says the county cannot go ex parte, without notice, and obtain an order or a warrant to enter land. I think these are extraordinary types of remedies and powers being asked for in this act. They are not typical of what we find in statutes in Ontario and they are certainly not typical of what you find in the public bills.

If some of the constituent municipalities think about some of those things when they analyse the act, they may have some preference for what is proposed in the public bill.

There may be some features of this bill which the ministry may wish to look at in the context of its own bill. There may be some reasonable amendments that can improve Bill 201. Nothing is perfect but, certainly from the perspective of Bathurst township, and I think from that of a lot of the other constituent municipalities in the county of Lanark if they think about it, the public bill is a much better approach to this.

There are also other very good policy reasons for the province to have a public bill dealing with the very important problem of waste disposal in all of our municipalities. Those are my comments.

Mr. Chairman: Mr. Polsinelli would like to make one more comment.

Mr. Polsinelli: Mr. Denison, I promise I will make one more comment, then I am not going to say anything further on this bill.

Mr. Denison: Thank you.

Mr. Polsinelli: That was a promise to the chairman and the members of the committee.

As we can see, it is a very complex issue. We are asking the municipalities essentially to not only take a look at the private bill, Pr78, but also to compare that to the public legislation. Given that this is an extraordinary situation, I am going to give an undertaking that we will help you in terms of providing our analysis of the differences between Bill Pr78 and Bill 201. When you go back to your councils and you want to talk about the two bills, at least you will have a biased Ministry of Municipal Affairs point of view as to the two bills.

I think it should assist you in terms of comparing both pieces of legislation and passing your resolutions in terms of which of the two you prefer, which of the two you are going to continue supporting. That should be

in your hands within the next couple of days. We will try to get it there as quickly as possible.

Mr. Denison: I do not know whether any of the constituent municipalities would want to have my remarks or not, but if the transcript of this meeting could also be provided to them, I would like them to have those remarks and comments as part of their analysis.

Mr. Chairman: I understand it is sent out as soon as it is available.

Mr. Denison: Thank you.

Mr. Chairman: Mr. Wood, would you like to comment at this time?

Mr. Wood: I should first of all say that, in regard to consideration of the public bill, that is, Bill 201, the content of that public bill has been reviewed by our office at the request of the steering committee.

I attended a meeting of the steering committee several weeks ago to discuss with the committee members the appropriateness of the public bill in the context of the private bill which was also before the House.

I was instructed at that time, after the committee considered my comments and Mr. Sexsmith's comments in regard to the public bill—I should say that that followed a meeting we requested to have and had held with the staff members of the Ministry of Municipal Affairs in regard to the public bill. We met with Satish Dhar and with the draftsmen of the bill in the ministry's offices and we reviewed it clause by clause with them, explaining to them why the public bill was significantly deficient to achieve not only Lanark's objectives, but also the objectives of any other county.

In particular, there are provisions in that bill which call for the taking over of unidentified and unidentifiable liabilities in regard to closed landfills that are going to cause terrific difficulties for counties. That was just one of a number.

I can assure this committee, on behalf of the steering committee, we have met with the staff, have considered the content of Bill 201 and have, by a letter dated February 3, 1989, provided the minister with detailed comments suggesting amendments to that bill. So this is not a case of there having been a bill introduced that has been ignored by my clients. It has been given attention, it has been analysed and it is understood that the bill does not pass muster, does not achieve the objectives of this county or any other county.

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When one speaks of support by the municipal affairs organizations, the counties out there, on polling we found out that none of them had been sent a copy of that bill. They had not received it; they did not know what was in it. As the member Mr. Smith said, they approved the principle of county authority, but had not seen the bill. We brought it to their attention.

We ensured that the technical people in that organization received it and reviewed it and commented on it. I understand the result is that the bill is going to be delayed now in order to give the counties a chance to consider the content and whether it meets their needs. We did not have an answer before as to how long it might take for this process to work its way through, but the



best estimate we have from a senior official in the Ministry of Municipal Affairs is that it will not take place in this part of the session; it may get consideration in the next part of the session, which will be in May, June, some time in there.

In my experience, once these matters go off for consultation and consideration, one never knows when they come back on to the dais. That is the concern my clients have about the public bill process, that it is a process that does not have an end to it; that it presently does not meet their needs, in terms of the content.

The basic philosophy of the two bills is the same. I listened to my friend Mr. Denison talk about the private bill and I have to conclude that he has not read the public bill. The elements of coercion which he tells you are present in the private bill are present in the public bill. They have to be. If you are going to seize the county with authority to do waste management disposal, you have to give it the tools. The public bill gives them the tools and the private bill gives them the tools. The difference is that, except for Bathurst falling off the wagon a couple of weeks ago, all of the municipalities that would be subject to his description of coercion in the private bill have agreed to be so coerced.

My friend says they did not receive a copy of the bill. That is wrong. In August they were all sent copies of the bill. If the language they used in approving their resolutions is less than perfect, I guess we are all guilty of being less than perfect. Some of them may have said, "The language is okay." Some of them may have said, "The bill is okay." Some of them may have said, "The principle is okay."

I can tell you for certain that I went down and reviewed the contents of the bill with the steering committee. The representatives were all sitting back here. They went back to their councils. Nothing was passed by these people in the dark of night, I can assure you of that. That is my principal concern with the deputation you have just heard and my concern about the notion that the matter should be sent back. This is just a recipe for delay.

The host municipality—or it thinks it is going to be the host—likes that, because that will just put the process off into Never Never Land; a delay to some people is a victory. I understand their position; I do not quarrel with it. If you do not want the site to be in your particular jurisdiction, you make reasonable arguments that will result in infinite delay.

I hope we would be able to persuade the ministry, because we have a situation here where the Ministry of the Environment, in my respectful submission, understands the significance of this bill and the significance of getting some waste management projects going. None of them are going right now. This one is a leader. They have shown leadership in asking for the bill, they have shown leadership in their study, but they have ground to a halt.

If what happens here, as a result of some manipulation of the process, is that the message is sent back to these people and all those other 30 steering committees all over Ontario that when push comes to shove the province will not support them, that is a very bad message to be sending back to those people.

There is a difference in these two bills in two essential points. First, this one is ready to go; that one is not. These people have to be able to keep going or they are going to stop and they are going to fragment and they may

fall apart altogether, because they just do not have a reason for being any longer. Second, the content of the bill you have in front of you is, for all intents and purposes, except for two areas, similar in philosophy and intent.

The two differences are that, first, there is an opportunity given in this bill, the private bill, which is not in the public bill, to get access to private property for the purposes of testing, not for going in people's houses. It was brought to our attention by the Attorney General (Mr. Scott) that it was in our bill. We said, "Fine, let's get some language and get that out of the bill." The amendments that are before you do it.

Right now private property owners are saying: "We can stop the process in Ontario by merely saying, 'You can't come on our property and do any testing. You can't do a little digging, you can't come on and study the flora and fauna.'" The Ministry of the Environment requires that kind of detailed analysis before it will give an approval under the Environmental Assessment Act, so people have become wise. They have said: "Fine. We'll just tell them, 'Don't come on.'"

The Ministry of the Environment knows about this. So does Municipal Affairs. We have confronted it. We have said, "Please give Lanark in this bill the power to go on and test, not to go into houses, not to interfere with their lives, but to go on to do whatever tests are necessary to find out whether this is a safe site." That is all this bill does. It is not some basic infringement of human rights. It is a way of dealing with the fact that humans have said, "We know a way to stop getting waste facilities in Ontario, at least on our property."

The second one has to do with liabilities. The big difference between the two bills is that the Lanark bill before said that the county did not have to assume any liabilities for older waste sites. The ministry was concerned about that. We met with Mr. Crump last week and came up with a reasonable compromise. The county has agreed that it will set up a reserve fund and will fund it to the extent of the \$1 million and will keep that fund topped up so that if there is a problem with one of these old waste sites, whether it is in Bathurst or some other township, then the money will be there to do the remedial work. The county will keep that fund topped up so that it is, in effect, an infinite reserve to look after difficulties.

The ministry, which is going to have to deal with this problem, has said that is a reasonable middle ground to take. We understand the county does not want to buy a pig in a poke. On the other hand, we would like their pocket to be somewhat in place of our pocket. This is the resolution.

The members of the steering committee have had a chance to consider it. The warden from the county is here this morning. They are full-bore behind it. Those folks came down here. They got up at 3:30 in the morning. They got on a bus at five o'clock to get down here. They are not down here because they were sold a packet of goods or because they think Bill 201 is their salvation. If they did, they would not be here. That has to be the most eloquent statement of that. To suggest that they should go back to their councils and get a report from these folks at the Ministry of Municipal Affairs as to why Bill 201 is so great and Bill Pr78 is so bad is not going to advance us. It really is not.

We can do that analysis. They have already paid us to do it. Respectfully, we do not need Municipal Affairs to do it. They asked to do it weeks ago. We told them that is just a recipe for delay, a bureaucratic answer



to get this thing off the session, to get it beyond the time period so nobody has to deal with it, and then everything at our end will grind to a halt and everything on the other end will go ahead as life intended, I suppose, and some day, this year or next year, we will get a public bill.

I hate to be so sarcastic and cynical about the process, but we could resolve this. That is why I have sincerely asked that we try to get this done in a week. We do not need a week. We are not going to send this all back to the individual councils.

The bill they looked at in August was put into your kind of language by legislative counsel; it was circulated around to your ministries; there is a set of technical amendments sitting in front of you today that, except for the reserve fund, do exactly the same things that those councillors approved in principle in August. Do not get bamboozled by all this talk about changes. One change is the reserve fund, and it is a permissive thing. It says the county builds it up at one buck a ton on waste.

I strongly urge you to set this over for a week to give the two ministries, the Ministry of the Environment and the Ministry of Municipal Affairs, a chance to talk. I believe the Ministry of the Environment badly wants this bill to go ahead. I would like them to get a chance to talk with Mr. Polsinelli and try to get it back in here next week. I appreciate that it would require some give on your part and a little inconvenience, but I really urge you to do it.

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Mr. Chairman: It is not the inconvenience that I am concerned about, sir. It is the rules under which we operate. If we are not sitting, it does create a problem. That is the only concern. Does anyone have any questions to Mr. Wood at this stage?

Mr. Keyes: I am afraid it is not so much in the way of a question as a kind of statement about the process. I want not to reiterate but to endorse the comments made by colleagues on both sides of this committee for the commendation of the efforts of all of the participating municipalities in Lanark.

We should realize that this is an ongoing process. If we look at the bill, we realize this bill was introduced for first reading in this House only on January 23, a very brief time ago. I would hate anyone to go away thinking that there have been efforts made to delay or block the continued progress in that regard. Here we are at February 15. That, I think, is dealing very quickly with it.

The thing that really does bother me is the extent of the amendments that have been presented to us today. I had a chance to read through them during the presentation. While the amendments are described as being technical in nature, in fairness to all committee members on both sides, they should have more time to look at those amendments.

Should the committee action be to defer this for one week or beyond, no one should leave this room with the idea that there has been a delay put in the way of the passage of a very important concept in legislation. Whether or not it is better to do it by Bill Pr78 or public Bill 201 is not, in a sense, for us to decide here. But I think the ongoing communication existing between the Ministry of the Municipal Affairs and the Ministry of the Environment and

Lanark county should be proof to show the goodwill of the government and the actions it is taking.

From experience of some years in municipal government, I find the one week literally almost an inadequate type of time to deal thoroughly with all of the issues that are still outstanding. It is not a question, Mr. Wood; it is more in the guise of a statement that I find a recess of some period of time would be appropriate. At such time as you want to call for it, Mr. Chairman, I would be prepared to make a motion in that regard.

We have heard from a dissenting municipality with some reasons that give us cause for concern. The right of municipalities to go to the Ontario Municipal Board as a kind of court of last resort is one we all want to preserve. While the public legislation that we have proposed is permissive in form, this is more mandatory in form, which rather flies in the face of the history of municipalities always being able to apply to a final arbitrator, the Ontario Municipal Board.

I believe that with more discussion time between Mr. Wood, as solicitor for the county, the Ministry of the Environment and the Ministry of Municipal Affairs, those issues could be resolved, so that the great intent of the county as a leader in waste management can be upheld and the appropriate progress made.

Keeping in mind again the fact that hopefully this session, which has now extended far beyond the anticipated terminal time of all of us, will some day come to an end and that we will be back here very shortly to carry on, should that be May or June, as Mr. Wood has suggested, that is still a very short period of time in the life of governments and legislation. If there are other questions, I will reserve the right to make a motion.

Mr. Chairman: Just for the understanding of the group that is here, we are uncertain as to when the House will rise. That creates a problem for us in terms of structuring meetings, because if the House is not sitting, we need special motions. It is very difficult to get a motion if we are going to be sitting, so we are caught in a bit of a dilemma.

I offer this as a suggestion. We anticipate that the House will be recalled in early April. If that were the case, we could give an undertaking that this item would be the first item on our agenda, the first agenda that we structure when this House comes back. I do not know whether that would satisfy the groups, but certainly that is one alternative.

I cannot think of another alternative, unless we pick a specific date and then we run into problems, because all the other committees that were supposed to be sitting this week have now been postponed. All the members of this committee sit on other committees and we are caught with a very bad timetable problem. I do not know what the solution is. Perhaps Mr. Keyes would consider making a motion along those lines.

Mr. Keyes: I do not want to restrict any questions or debate from the members, but I am prepared to make a motion at this time in regard to the time—

Mr. Chairman: Are there any other members who would like to comment first?



Mr. Keyes: If not, I am prepared to move that this issue be deferred until the House resumes following its adjournment and that this becomes the very first item on that agenda, with the opportunity in the meantime for very active participation by the Ministry of Municipal Affairs and the Ministry of the Environment with Mr. Wood, solicitor for the county, to resolve issues raised and to provide the committee with an opportunity to study the amendments as proposed this morning and made available to us.

Mr. Wood: Could there be an opening left on that motion such that if the session carries on now and we are able to reach resolution before you rise, we could get back before you?

Mr. Keyes: That understanding does not upset me, if a resolution is arrived at among Municipal Affairs, Environment and yourselves, rather than pinpointing one week.

Mr. Chairman: I am advised by the clerk that we may have a notice problem with that. So it is probably not feasible.

Mr. McCague: I have been forecasting that the House might rise on July 1.

Mr. Smith: What is your accuracy rate?

Mr. McCague: A hell of a lot better than the new members around here, let me tell you. That only means that this has happened many times in 15 years.

There are a couple of problems with Mr. Keyes's motion, and I think he will agree with what I am going to point out. Mr. Denison has made some valid points, I think, which have been alluded to by Mr. Keyes in the sort of motion that is proposed. There is no opportunity or no suggestion, for instance, that Mr. Denison and Mr. Wood are to get together. I notice with interest that we have a package of amendments here that I presume are proposed by legislative counsel and the ministry. Who proposed these amendments?

Mr. Wood: They came as a result of discussions with the various ministries and they have been drafted, I believe, by legislative counsel. But in the absence of anybody else, I would have recommended them to you.

Mr. McCague: The interesting point is that Mr. Denison in his critique of the bill as printed did not mention any of those we have here but mentioned every other one. It would seem to me that in fairness the people who are objecting could be involved in the process.

Mr. Keyes: My motion does not include that at all. That is why I specifically made reference to Municipal Affairs and Environment, because of the issues that have been raised this morning by Mr. Denison and legislative counsel as well.

Mr. Chairman: The consultation process, I think, is something that is in the best interest of everyone. That should go on. I am not sure whether that should form part of the motion.

Because of comments made that we could be here until July, the suggestion has been that the matter be adjourned not later than the first meeting of the committee, Mr. Keyes, so if the House continues to sit and we have a meeting, this will be the first item on the agenda; that it will be the

next meeting we have from today. I do not know whether you would be prepared to amend your motion to incorporate that. I think that would satisfy some consideration.

Mr. Keyes: I have only one concern, that that does not necessarily provide Municipal Affairs or Environment with the opportunity to deal with the issue fully, because if we continue on here until July 1, we may well have a meeting two weeks from today. That issue then being placed first on the agenda, it does not provide the opportunity to resolve the concerns that have been raised.

Mr. Polsinelli: If your motion is that it be adjourned to a meeting not later than the first meeting after we come back, it does not preclude us from dealing with this matter earlier. It just puts an end time limit on it.

Interjection.

Mr. Chairman: Mr. Denison, you had better sit down so we can get you on record.

Mr. Denison: I was just trying to be helpful. I wonder if it is possible in the motion of deferral to set a specific date for the meeting or the first meeting when it resumes.

Mr. Keyes: That is why we need the words "the first meeting."

Mr. Denison: Presumably this committee sits every second week.

Mr. Chairman: No, the committee is actually supposed to sit every week. It depends on the agenda, on what we have before us. We could go two or three weeks without sitting.

Mr. Denison: My concern about saying the next meeting is that if the next meeting is next Wednesday, I am not sure all the things that are supposed to happen can happen in that time.

Mr. Chairman: It will not be next Wednesday. I can assure you of that. We are not scheduled to sit next Wednesday.

Mr. Denison: Okay.

Mr. Chairman: Mr. Keyes, would you adjust the motion to whatever way you would like to make it, so we can deal with it?

Mr. Keyes: I am looking for one word here that has escaped me at the moment, so I will ask for help, please. The whole concept is to move that consideration of Pr78 be adjourned until the first meeting of this committee following the resumption of the session. That is what I am looking for.

Mr. Smith: "The first available meeting date"?

Mr. Keyes: It is more or less after our adjournment, which we do anticipate.

Clerk of the Committee: Or "in the next session"?

Mr. Keyes: In the next session, okay, which may be six weeks away. It may be longer. That still provides the opportunity. I do not see us



resolving all the issues that are there in the next week or the next two weeks.

Mr. Chairman: Mr. Keyes moves that consideration of Bill Pr78 be adjourned until the first meeting of this committee in the next session.

Mr. Keyes: "Not later than."

Mr. Chairman: I am sorry. He has amended it to say "not later than."

Mr. Keyes: "Not later than the first meeting." That will give you an opportunity.

Mr. Chairman: So if we were to meet before, we could bring it on.

Mr. Keyes: Right, not later than the first meeting.

Mr. Chairman: All right. Does that satisfy your concern, Mr. McCague?

Mr. McCague: I would not have any difficulty with it if I did not recall so well what happens in this crazy place. We could go on for quite a while depending on what issue comes up. Something in between is probably the first opportunity that the committee has to sit following April 11. That is more precise and, as I understand it, if we do get out of here in two weeks' time, we will be back on April 11.

Mr. Chairman: All right. Are you suggesting that as an amendment?

Mr. McCague: I think it would be a good one. Mr. Keyes may not agree.

Mr. Keyes: I am not opposed to it. I thought it was covered by saying "not later than," because "not later than" allows it to come any time in advance of a return in the session. That is why I think it covers what you want.

Mr. McCague: The other point, though, is, do we get out?

Mr. Keyes: If we get out, it is still not later than a return; it can still be before we get out.

Mr. McCague: Okay, if it is clear.

Mr. Chairman: That is the intention.

Mr. Keyes: It could still be before; it could be next week or in two weeks.

Mr. Chairman: All right. We are dealing with Mr. Keyes's motion. Any further comment on it?

Mr. Keyes: "Not later than."

Mr. Chairman: Just for clarity, I will read it again.

Mr. Keyes moves that consideration of Bill Pr78 be adjourned not later than the first meeting of this committee in the next session.

All those in favour? Opposed?

Motion agreed to.

Mr. Chairman: Thank you very much for your attendance. I hope that you understand our concern and our problems. The committee is adjourned.

The committee adjourned at 12:13 p.m.





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STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

COUNTY OF LANARK ACT

WEDNESDAY, MARCH 1, 1989





STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

CHAIRMAN: Furlong, Allan W. (Durham Centre L)  
VICE-CHAIRMAN: Lipsett, Ron (Grey L)  
Keyes, Kenneth A. (Kingston and The Islands L)  
Kormos, Peter (Welland-Thorold NDP)  
Leone, Laureano (Downsview L)  
McCague, George R. (Simcoe West PC)  
Miclash, Frank (Kenora L)  
Pollock, Jim (Hastings-Peterborough PC)  
Reville, David (Riverdale NDP)  
Smith, David W. (Lambton L)  
Sola, John (Mississauga East L)

Substitutions:

LeBourdais, Linda (Etobicoke West L) for Mr. Miclash  
Wiseman, Douglas J. (Lanark-Renfrew PC) for Mr. McCague

Clerk: Manikel, Tannis

Staff:

Mifsud, Lucinda, Legislative Counsel

Witnesses:

From the County of Lanark and the Steering Committee, Smiths Falls and Area  
Waste Management Study:

Wood, Dennis H., Solicitor; with McCarthy and McCarthy  
Sexsmith, Douglas, Consultant

From the Ministry of Municipal Affairs:

Haggerty, Ray (Niagara South L), representing the Minister of Municipal Affairs

From the Township of Bathurst:

McPhee, Larry, Councillor

From the Balderson and Area Community Association:

Varty, Barbara

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Wednesday, March 1, 1989

The committee met at 10:14 a.m. in committee room 1.

COUNTY OF LANARK ACT  
(continued)

Consideration of Bill Pr78, An Act respecting the County of Lanark.

Mr. Chairman: Good morning, ladies and gentlemen. The committee will come to order. The only item on our agenda this morning is a continuation of the hearings on Bill Pr78, An Act respecting the County of Lanark. Appearing before us again this morning is Dennis Wood, solicitor. Mr. Wood, perhaps you could advise the committee of what has happened since the last time we met.

Mr. Wood: Since our last appearance before you, there have been further discussions between senior officials in the Ministry of the Environment and the Ministry of Municipal Affairs with regard to the issue of the relationship between Bill 201 and Bill Pr78. There have been discussions, at a staff level, between ourselves and representatives of the Ministry of Municipal Affairs with regard to its concerns, on a technical level, with the language and the provisions of the bill.

The results of those latter discussions are a number of amendments, which are before you for consideration this morning, that we believe have responded in a constructive and positive way to the suggestions made by the Ministry of Municipal Affairs officials. In that regard, we believe that the bill, on a technical level, is generally acceptable to the ministry, although it may of course have some comments about that for you.

We have also consulted with the legal counsel for the township of Bathurst, who appeared before you last time. He provided us with a written letter of comments just this last Monday and asked that we consider five amendments to the language of the bill. I am pleased to report that we have agreed to three of those. Those, I believe, have been incorporated by legislative counsel into the amendments before you.

Of the remaining two, one was a request that we amend the provisions in the bill with regard to a reserve fund for possible future remedial action. He requested that we consider the possibility of insurance in addition to the reserve fund. We have spoken with our consultant, Mr. Sexsmith, who is here this morning. He advises that the kind of insurance being sought by Mr. Denison is just not available from the private sector and therefore it is not a practical request. Therefore, we have obviously not responded with any amendments in that regard.

The last request he made was to introduce language into the bill with regard to the notice provisions that would be given in the event that it is sought to gain access to a property for testing. Those notice provisions presently contemplate notice to an occupier. Mr. Denison had requested that we substitute the words "registered owner" for the word "occupier."

We have discussed that with the Ministry of the Attorney General. We were advised by them that the word "occupier" should remain in the legislation



in view of the occupiers' liability statute. With regard to the addition of the words "registered owner," we have, in principle, no serious objection to that language being added to the bill, provided that your legislative counsel can come up with some language to do that.

The suggestion was that we import the definition of registered owner from the Expropriations Act, which would include—

Interjection.

Mr. Wood: Oh, it may be that your legislative counsel has another suggestion to deal with this particular matter.

In principle, the approach we have adopted on behalf of our client is to respond in a constructive way to all of the reasonable requests that have been made. If I might direct one comment, last time Mr. Denison had expressed a concern that a right of appeal to the Ontario Municipal Board was not available under this bill. I know Mr. Keyes had specifically raised that matter.

I should say in the first instance that the bill did not remove general rights of appeal to the municipal board or the Environmental Assessment Board. The only right of appeal that was removed had to do with the ability of a local municipality to resist an acquisition of land within its boundaries and have that matter referred to the municipal board. Even on that basis, we have now responded positively to Mr. Denison's request, and the language is such that this appeal is available now. The language is the same as it is in the Municipal Act and in the various regional acts, so that matter has been answered.

In principle and in practice, we have been engaging in lengthy and detailed discussions to try to get this private bill into a shape that meets the concerns of the various ministries but still achieves the basic objectives that it was originally set out to achieve: to allow this waste management program to continue; to avoid the imminent and likely breakup of the organization as it was not able to carry on with its program.

1020

In so far as the relationship goes between this private bill and Bill 201, An Act to amend the Municipal Act, which was a matter of concern at the last meeting, I might say that first, as promised, we have provided detailed comments to the minister's office by way of suggested amendments to that bill, for consideration at such time as that would be considered by his office and subsequently by the Legislature.

Second, to the extent that that bill will follow this one through the process, any changes that are required to be made to this bill in order to ensure that it is consistent with the public bill can be made, and are within the control of the ministry and ultimately the government and the Legislature, so that there should not be any transitional difficulties between the two processes.

I should point out that the way Bill Pr78, An Act respecting the County of Lanark, works, it allows the county to go ahead, do the planning and establish a waste management facility, while the other existing waste management facilities operated by the various municipalities continue. Then there is a point—when the facility is, in effect, established—that the

county will move in and use its powers under the act to take over the waste management disposal function.

But the important thing I should point out is that collection, under this statute, will still remain with the local municipalities because that is the way they wanted it to happen; collection will be taken over only upon consent of the two parties, that is, the county agreeing to do it and the local municipalities agreeing that it should be done. What this bill is directed at is that very thorny and difficult problem of actually establishing a waste management disposal facility and the powers necessary to do that.

So I would recommend the bill to you in so far as it achieves the objectives of the county and the objectives of the local municipalities. It is being processed in such a way that Bill 201 will follow it through, and any necessary fine-tuning of this bill to coincide with Bill 201 can be done through the language of Bill 201. So there is not any reason to suspect a conflict between the provisions of the two bills, ultimately. I urge your support of the bill.

Mr. Chairman: Thank you, Mr. Wood. Before we get into questions, perhaps we could hear from Mr. Haggerty, who is here representing the Ministry of Municipal Affairs. He can give us the government's position and perhaps some further detail on the negotiations that went on over the past couple of weeks.

Mr. Haggerty: I want to commend the county of Lanark in moving in this direction and perhaps I can be considered as one of the culprits in the decision-making in county government in this particular area. I was chairman of the county government review and it was one of the matters of most pressing need in Ontario—particularly to the 26 counties in the province—the need of some form of measures in the municipal waste planning process. The question is not whether it should be at the county level or the municipal level, but whether it should be done jointly.

The recommendation was that there was a need for government legislation in this particular area. I was delighted to see that the minister had been moving in this particular area and has introduced a bill here in January of this year, Bill 201, that would permit county governments to move in this particular level of municipal waste disposal planning. Of course, it was subject to the approval of the Ministry of the Environment and its standards.

Bill 201 sets out a program policy by the government in saying that it is the standard policy in the handling of municipal waste throughout the 26 counties. I think this is something the members of the committee will have to take into consideration as they arrive at some way to resolve the issue between the private bill of the county of Lanark and a government bill.

I think it was stated by the parliamentary assistant here last week that the ministry has no objections to it, as long as the two bills are compatible. That is the key the committee will have to take into consideration this morning. I also know the pressing, urgent need out there someplace that some government level will have to move in the area of resolving the issue of the crisis in waste disposal in municipalities. As I said, I commend the county of Lanark for moving in this particular area.

I understand that some of the proposed amendments are compatible with the present Ministry of Municipal Affairs' Bill 201, An Act to amend the Municipal Act, and some are not. That is a question that will have to be



considered here this morning, but the minister has no objections as long as you understand that Bill 201 is there and it may, in the long run, still override Bill Pr78, An Act respecting the County of Lanark.

Mr. Chairman: Thank you, Mr. Haggerty. Mr. Kormos?

Mr. Kormos: Two things: One is a fundamental concern. Mr. Haggerty spoke briefly to that and I appreciate that the presentation to this point attempted to deal with that, and that is that Bill 201 is there. It predates this bill by but a few days and that is acknowledged, at least in terms of first reading.

To suggest that the two be compatible is a far cry from making them identical. The fact remains that if the ministry recognizes the element of urgency—and I attach nothing but the best of motives to the county council in its search to have Bill Pr78 approved by the committee and similarly passed—but it remains that Bill 201 is there. If indeed there is a sense of urgency—and I am sure there is, not just for the county of Lanark, but as well for other counties across the province—then it is a simple matter of making sure that Bill 201 receives priority and proceeds with more than due haste.

The process of a private bill short-circuits, for instance, the committee hearings that Bill 201 would be subject to, presumably with input from counties across the province and the wisdom and the individual experience of counties across the province—a fine-tuning process that would make that bill a universal one and that would accommodate, hopefully, all of the possible difficulties that could arise, not only this year, but in years and decades down the road.

So really, before anything, this committee has to be subject to new direction—before any further discussion or queries of this presentation are considered—on whether Bill 201 should be the overriding interest, and really that makes Bill Pr78 inappropriate at this point in time. It puts some pressure on the government to make sure that Bill 201, as I say, is its priority.

The other thing that concerns me is, it is pretty obvious to me, and I suspect to other members of the committee, that the Balderson and Area Community Association was the leading opponent of Bill Pr78, as a community group, as a coalition of interested individuals within the community. I look at their submission, which speaks basically about a lack of disclosure to them and an inability on their part, therefore, to comment or to argue—as they have a right to do—against the bill, even as the amendments propose it to be changed.

I think that is an important part, especially considering that Bill Pr78 here short-circuits the usual committee process that would attach to Bill 201. If I am wrong about either of those two, I would be more than pleased to have that pointed out to me. I really think the issue here is the more basic, initial issue of the following: Are we even in a position to talk about Bill Pr78, from the point of view of the Balderson group requesting deferral of the matter?

I have to indicate that my recollection of the last meeting, on February 15, was that there was the suggestion this was going to be more than basically a two-week matter; that it was in all likelihood going to take longer than two weeks for everybody to discuss the matter.

1030

Similarly, we have heard talk about some discussion between the county and ministries, but I have not heard anything about any discussion or any dialogue between the county and, among others, the Balderson and Area Community Association.

It would seem to me that was certainly to be inferred from the direction that was given these people on February 15: that there should be some dialogue and discussion, not just with ministry people, but with the community group. There is no suggestion to me that this has occurred at all.

I am suggesting that this committee, at your direction, Mr. Chairman, address its mind first to whether it is premature in any event to talk about Bill Pr78 in view of the fact that Bill 201 is there. Surely you do not want a patchwork across the province of schemes of assistance. You want a standard that is equally applicable in eastern Ontario as it is in western Ontario, southern Ontario and northern Ontario. You do not want to create a patchwork. You do not want to create one county that constitutes an exception to the general rule. That would create a horror show, which some of you, having been around here a lot longer than I have for sure, would be far more familiar with than I am: the type of horror show that this type of patchworking creates.

Mr. Chairman: Perhaps I can deal with your second point first. I think we will hear from the Balderson group so that it can tell us what input it has had. It was represented by counsel the last time, and I understand that counsel was here and has been involved in the negotiations. So perhaps it can set us straight on that point.

As to the second point, Mr. Haggerty, you have been here a lot longer than I have, for sure.

Mr. Haggerty: I was just thinking about the comments of the member for Welland-Thorold (Mr. Kormos) and I am sure he is aware of the problems facing the general public and the municipalities in the Niagara region. I know Welland is involved in one particular area and so is the town of Fort Erie, and there is a delay in hearings in review of the minister's guidelines and approval in that particular area.

I think one of the things the committee has to take a hard look at is the pressing need out there in some communities. I know that representatives have appeared before the committee and told it of the need, even in Lanark county and through the other remaining counties, for some government action, whether local or provincial, in this particular area. Some, in fact, had been debating it and looking at it for a period of seven or eight years, waiting for approval from the Ministry of the Environment.

I can say this much: If the intent is good in Bill 201 and if you take into consideration the pressing matter, it might be a year before the bill is given royal assent.

I am sure there must have been some discussion out there in the municipalities and county governments, saying that jointly they can provide the service for the public.

I understand in this particular area they have six or seven years of working to this stage of the game—I should not use "game"—to come to some consensus and agreement between the municipalities. The committee will have to



decide: Do you want to shatter that today or do you want to move forward? That is not up to me to decide, but I tell you there is a pressing need out there. I think the intent of both bills is the same: to provide public service and see that we get on with the business of resolving some of the problems out there in the municipalities.

I know, when you are talking about consultants, lawyers and engineers, that costs go up year by year. You have to bear that in mind, too. I know my colleague from Welland-Thorold is a member of that association and he knows sometimes the delays and the cost to the applicants in this particular area. So I bring that to the attention of committee members. You are going to have to make that decision.

Mr. Chairman: Mr. Kormos, do you want a comment on Mr. Haggerty's statement?

Mr. Kormos: Yes, a brief response. Being a lawyer, I used to think it was the world's second-oldest profession; now being a politician, I realize it is the world's third-oldest profession.

Mr. Haggerty: It is one of the first.

Mr. Chairman: Lawyers are first. They tell me there is a joke about lawyers and—

Mr. Kormos: I know, but I was working on that; I was working off that punchline.

Mr. Haggerty: I was thinking of Exodus, chapter 18.

Mr. Kormos: But it remains that it is incredible that a private bill, which creates some very special powers for one county. You talk about shattering: This group has talked twice, both last time and today, about the breakup of the organization if this bill is not passed.

It remains that it would seem absurd to most of the communities in the province that this private bill, which notwithstanding what this committee is doing now has not undergone as rigorous and thorough an examination by a committee process as Bill 201 would undergo—it remains incredible that when Mr. Haggerty speaks of the acknowledged urgency, it would and should be passed while Bill 201 lingers in the wings.

If that is the real concern and the real issue, then it is certainly in the power of other people on this committee, other than myself certainly or our party, to make sure that it is speeded up and that it is given priority. But if the process of putting legislation through, from its first reading to royal assent, is to be given any effect and is to be valued at all, then that process should be applicable to all types of legislation and not just government bills as compared to private bills.

Again, I appreciate that on this very committee I am something of a neophyte, but this is not a simple matter of reviving an incorporation or some of the other very typical things this committee approves. This is a very substantial bit of legislation, which will not undergo the committee process Bill 201 will. It seems to me to be a real shortcircuit of the whole legislative process to be considering something as substantial as Bill Pr78

here as compared to, in its proper format, Bill 201, in the proper committee process.

The matter of urgency is there. We have heard twice about the breakup of your organization. I find that hard to believe. They are committed to the goal they have in mind and they know Bill 201 is there. You would think that they would be leaning on government members to make sure Bill 201 gets processed as quickly as possible and that they be given an assurance that in the next session, it would acquire life as legislation. Government certainly has that power.

Once again, it seems the arguments, and I have listened carefully to Mr. Haggerty, are really not applicable, that it is still a matter of shortcircuiting the legislative process. It comes down to being fundamentally undemocratic. Certainly, it would seem that way to people who would want to have input through the committee process.

Mr. Keyes: I have two comments. One, latterly, to the member for Welland-Thorold (Mr. Kormos): I do not believe I would want to be part of something that was considered undemocratic. I think what we are following here is the process under which private bills are considered by this House. I would have perhaps some more concerns along his line if we were not following this with legislation from the province.

I might just make a quick comparison. Quite often there are areas of this nature and other natures where numbers get together—communities, individuals, sometimes within a municipality—and decide they want to take action on an issue that is of great significance to their particular area and are the forerunners of government legislation. To a large extent, I think that is what this is.

It reminds me of the city of Kingston when we had a great desire to preserve our historical limestone buildings, but there was no way it could be done legally. Some years ago during my term in office, we had a private member's bill so that we could preserve the local architecture in the limestone buildings. That was followed up then, eventually, by the province in the Ontario Heritage Act which is now going to receive its first revision.

I look at this as somewhat similar. The municipalities in Lanark have decided, as Mr. Haggerty has said, that it is a very pressing issue. They want to get on with it. They have spent a lot of money and a lot of time. I am sure, Mr. Kormos, that it has had a reasonable amount of examination within the county, through the whole process of going through the different municipalities as they considered it in their own areas. We know Bathurst has opposed it and is still opposing it. It has had considerable discussion within county council itself.

I am not aware of what public meetings were held, but this is certainly a topic that must have been on the discussion panel of many a Hot Stove League during the time it has been in its gestation period. I see it as a kind of pilot project. I see it as a government incentive to support local initiative, having given it very close scrutiny. It is not as though there is a bill coming before us that has not had that. Probably it has had more scrutiny by government lawyers than what any other private bill might have, on the basis that they are trying to be sure it is compatible with legislation, Bill 201, that has now been filed and has had first reading. They have reviewed it carefully to make sure the principles are compatible.



1040

I appreciate that Mr. Haggerty has spoken very favourably, in my opinion, this morning on behalf of the Ministry of Municipal Affairs, the one ministry that did express some concerns two weeks ago. Through negotiations with solicitors on all sides, they have now reached a fair consensus of support for the bill because of its compatibility, because of its agreement in principle with the government's desires in this same regard.

As we will hear from the Balderson people, I would be interested, noting their submission is not dated at all, whether this came in after our last time. Was this a view from before? Is this today's view? It is a minor point, but it would be interesting to know that.

I appreciate the fact that they have certainly not seen the changes we are about to move in this committee, but I hope they will have some support and faith in the fact that counsel for the dissenting township has basically agreed, with another addition, to the changes that are being made in the bill.

Mr. Wiseman: I will not take any more time, but I would just like to associate the remarks I would have made with those of Mr. Haggerty and Mr. Keyes. I think the bill has had a lot of scrutiny out there in the county. As I understand it, the Balderson group has been to all the meetings of the steering committee or has had representation there.

We are dealing with 16 municipalities, 16 elected governments, and they voted this way. They have the blessing, I believe, of the Ministry of the Attorney General and the Ministry of the Environment, and now the Ministry of Municipal Affairs. I think there has been a lot of scrutiny, as Mr. Keyes says, and it is going to dovetail with Bill 201, whatever form it ends up taking.

Mr. Kormos, you have not been here as long as the rest of us. I think Bill 201 may not go through just as fast as all of us might like to see and go into committee and so on. As I believe Mr. Haggerty said, it could well be a year, knowing how things proceed in the Legislature and the priority sometimes given and the scrutiny it will be given by municipalities and so on.

I would like to just associate my remarks with those of the other two members who spoke.

Mr. Sola: I think Mr. Keyes has made most of my points, so there is no use reiterating them.

Mr. Chairman: Are there any other questions or comments? Mr. Wood, would you like to comment on what you have heard so far?

Mr. Wood: Yes, but briefly. In regard to the question of the position that is being taken here this morning, we had, I thought, honoured our undertaking to you to consult with the solicitor for the municipality. I must say we have taken great pains throughout this process to try to ensure that those people who are interested in it have been informed as to the various stages the process has gone through.

As Mr. Keyes has indicated, if one looks at the letter that was sent by the solicitor for the municipality, which covered some four pages of detailed comments, we have now met four of the five. The fifth one we could not meet

because you just cannot get insurance. What he said is, "If you can meet our five requirements, then our opposition will be withdrawn."

I think that we have in principle done that job. Although I concede we do not have the sign-off here, and perhaps we would not get it because you could not get the insurance and you might not have ever been satisfied about that, I think that in principle we have done what you asked us to do.

As far as the Balderson folks are concerned, we will hear from them, but I say to you quite bluntly that one of the things this bill has is an opportunity for the county to go on to the property that is the preferred site and do some testing to find out whether we can proceed further with the environmental assessment process. That is one of the things this opposition group does not want to happen.

As I said to you the last time, any delay, whether it is a month—I agree with Mr. Wiseman, sitting for Mr. McCague, that once Bill 201 finds its way into committee, we have no knowledge, no certainty when it will come out, so delay serves the purposes of stilling this process.

I should make very clear that when I talk about the municipalities having no incentive to carry on, what I am in effect saying is that they have gone as far as they can go. They have been blocked by an inability to carry on, get access to property and do the things that are necessary to finish the environmental assessment process, which I think we all embrace—a proper environmental planning process. They cannot go further. They do not have anything to do in that regard. They have put a lot of energy into this process for a great number of years and they have reached the end of the line.

What I respectfully say about the residents is that they should walk through this process. There is nothing in this bill that is going to deprive them of their opportunities to participate in the environmental assessment, the planning process, the Planning Act, the Environmental Assessment Act or whatever—nothing.

All this bill does is transfer powers from one level to another and provide for appropriate transitional provisions. So in terms of the principles of the bill, the residents are not affected one whit. They are just going to have to deal with a different level of government. As far as the resident is concerned, the concerns surely are: "Can I participate in the process? Will I have my opportunities to appeal to the appropriate bodies?" Those rights have not been detrimentally affected in this bill.

The last point that was raised was the notion of patchwork. What is happening here is that there is an acknowledgement by the government that the private bill was in train many, many months before the public bill hit the light of day. This application was made last September and has been considered for many months through that process.

There is not going to be a patchwork because the government controls the process, frankly. If Bill 201 is marching through its stages, the government is then in a position to control whatever private legislation may come forward. It is going to go forward this morning, if it goes forward, because the government takes the view that the two can live together. The government can make that decision on each initiative.

But in a practical sense, these initiatives take months and months and months to put together. You can imagine that if you have to get consensus



among 16 municipalities to language in a bill, you do not do that overnight. So in a practical sense, it is not a concern because that kind of remarkable consensus that has been achieved in Lanark will be very difficult, if not impossible, to achieve in other parts of this province.

Mr. Chairman: Perhaps at this time we could hear from Mr. McPhee and Ms. Varty. Could we ask you, Mr. Wood, to move away from the table? For identification purposes, am I right, Mr. McPhee, that you are councillor for the township of Bathurst?

Mr. McPhee: Yes, I am.

Mr. Chairman: Ms. Varty, you are a member of the Balderson and Area Community Association?

Ms. Varty: Yes, I am.

Mr. McPhee: I spent a good portion of my time yesterday discussing Bill Pr78 and its amendments, and the amendments to the amendments, with Mr. Denison, our solicitor, who met with this committee two weeks ago. Mr. Denison also spent a lot of time yesterday receiving and sending both fax messages and phone calls to and from the steering committee solicitor, McCarthy and McCarthy, and members of the various ministries involved in the passage of this bill.

The reason for pressing ahead with this bill at this time is uncertain to me, but what I am certain of is that no municipality in Lanark county, including Bathurst township, has any idea exactly what is now written in Bill Pr78, it has been changed so many times.

#### 1050

To say we have been kept up to date is false. We had to come to Toronto to get a copy of Bill Pr78 in the first place. We had never received one as a municipality. We had a draft proposal that was quite old—I think it was June or July 1988—that we were working with. We came here. We got the actual copy of Pr78. It was totally different than what we had too.

I would like to reiterate the concerns of Bathurst township council. We ask that section 13 state that permission to enter on to private property be obtained from the registered property owner and/or the tenant occupant. If permission is denied, a court order would be required before access is achieved. Mr. Wood has addressed that. We would like the revision to include the property owner as well.

The second concern is with respect to the amendment submitted two weeks ago, subsection 3(7) headed "Funding the reserve fund," by Mr. Wood of McCarthy and McCarthy. Our calculations indicate that at a dollar per tonne of waste received, it would take approximately 87 years to accumulate \$1 million in the fund. It is conceivable that when or if a claim is made by a subscribing municipality, the funds would not be available. I have checked and Mr. Denison has checked with the insurance companies, and we disagree in that you could get a policy for this type of protection, liability insurance.

A third concern involves subsection 4(2), where we wish the county to obtain subscribing municipality consent, and failing that, to obtain consent from the Ontario Municipal Board before acquiring land for the purpose of

establishing a waste management system. I also understand that problem has been addressed now and is in the revision.

What I am asking this committee is that if our concerns have been addressed and if you know our concerns have been addressed and written into this bill, that is fine, that is one thing, but I would like the committee to defer its decision until all the concerned parties have had the opportunity to look at the amendments and to go through them in order to understand exactly what is in the bill.

As a footnote, I would also like to tell the steering committee and this committee here today that Bathurst township, working with the Balderson and Area Community Association, is presently trying to convince its residents to allow the drilling companies to come on to the property to drill. We are having a meeting with the property owners next week. We are approaching them and trying to get their co-operation.

So we are not delaying this. We are not looking for a tactic. It is not a tactic to delay the bill. We are trying to co-operate. We are trying to work with them. But if this is the way of getting people to co-operate, then there has to be a better way. That is basically all I have to say.

Mr. Chairman: Ms. Varty, would you like to make a comment?

Ms. Varty: Yes. The submission from BACA—I apologize for the lack of date—is February 28. I received the amendments to Bill Pr78. It also is lacking a date. I assume its date may read February 28. Is that correct? Are these the amendments that were made yesterday?

Mr. Chairman: Yes.

Ms. Varty: Our association has not had an opportunity to review the amendments and we would like that opportunity. We would like this matter deferred to another time. We, again, are not trying to delay; this is not a delaying tactic. As a fully incorporated community association in Ontario, we would like to have further opportunity to review this. We are aware that there are residents in a number of other townships in Lanark county who have a great deal of concern.

I have heard a lot of discussion this morning about the planning process and I believe it is the planning process we have difficulty with. I heard Mr. Haggerty discuss that there was an indication this bill has been discussed on this waste management problem has been on the agenda for six or seven years.

There is a fundamental problem with your planning process. The residents have not been involved. Had the residents been involved in the planning process, you would not be having the delay you are having today. The bottom line of it is that we are the people who live in the community. If we are not included in the planning of where our waste—garbage management goes, then certainly, from a position down here at Queen's Park, you are going to have difficulty understanding how we feel.

Some of the residents whose land is being considered for this site found out by reading the newspaper less than a year ago that their properties were being considered. The fact that this has been on the books for six or seven years really surprises me. I think that another delay of a few weeks, a month, or whenever the next session is—what is a month after six or seven years?

Mr. McPhee has suggested to the residents that they allow drilling. We



have not had an opportunity to meet with them. Certainly Bathurst township and the Balderson and Area Community Association are planning on doing that.

I guess the other issue would be that when Pr78 was formulated, it was before the municipal elections. The municipal elections in our county have seen a number of changes and a change of attitude. As a matter of fact, in our particular township we ran a slate of candidates so that we would have more of a say in what is happening. Although we met with a lot of criticism, we felt that was our democratic right. We want to be involved in a planning process that allows that democratic right.

In closing, we have not had an opportunity to review these amendments. If you could defer the bill, we would appreciate that opportunity. We do understand that we are close to coming to an agreement. I received these amendments this morning and I do have to take them back to my committee. I would ask your consideration of that.

Mr. Chairman: Just a qualification point before we get into questions: Was Mr. Denison representing both the association and the township, or just one or the other?

Mr. McPhee: He was when he was here, but he is normally hired by the township, by the municipality.

Mr. Chairman: So he was hired by the township.

Mr. McPhee: Yes.

Mr. Kormos: I thought it was just an abundance of caution that I had received a second set of amendments that were the same as the set of amendments we received on February 15. Now I realize that, yes, they are new. Does that mean all the other members of the committee only just received this second set of amendments this morning?

Ms. Varty: Yes.

Mr. Kormos: Hell's bells, Mr. Chairman, how are we to contradict Ms. Varty under those circumstances? I have read the other ones and made notes, and while Ms. Varty was talking I have noted again interesting little changes, but maybe that is the way it has been done all along. If it is the way it has been done all along, I say it is time to change that.

This lady makes good arguments on behalf of an opportunity for her organization, which is representative of more than a few people, as I understand it, to review these. How can we expect her to comment on it, to make submissions to this committee when, in appearing on behalf of people who live some distance from here, she got copies of this only this morning, as we did?

As I say, I thought it was an abundance of caution, that people expected me to misplace my original ones, which could well have happened. Really, I think that is kind of incredible.

Mr. Chairman: It is my understanding, and the clerk can correct me if I am wrong, that the last time the groups were here there was some communication which was to take place between all parties and the ministries that were involved. It was my understanding that the process was ongoing and did take place, and the result of those discussions was the amendments that you see before you. If that is not correct, then I am misinformed.

Mr. Kormos: Fair enough, but these are not little amendments. The ones I have checked so far are not just a cleanup of language. There is some significant change to the amendments that were offered on February 15.

What I am asking is, how can you counter this lady's argument about not having had an opportunity to review the amendments herself, in view of the fact that she is here on behalf of a community organization? We have already heard how this committee is going to take the role of hearing comments and submissions. How can we hear meaningful comments or submissions if she has not even had a chance to review these with her committee, with people in the community who obviously have an interest? They sent her some distance today along with the lawyer.

1100

Mr. Leone: Yes, this is what I would like to understand also, because we feel responsible to the group which was here last time. These amendments are the results of the discussions carried on on February 15, I suppose, an agreement with Municipal Affairs on some of the questions that were raised at that time.

I see now that probably everything presented by this association was already considered at that meeting, because we were just about to approve or decide on February 15. Then we decided we needed some clarifications. In my mind—Mr. Chairman, you will tell us—if these amendments are the results of what we decided on February 15, today would just be a clearing process of what we decided on February 15.

Mr. Chairman: I think what happened on February 15 was that a number of concerns were raised by Mr. Denison on behalf of the group. They were identified and, I take it, were then the subject matter of the delay. These things were addressed between Mr. Denison, representing these people, and the counsel, Mr. Wood. The result of that is the amendment we have before us.

I think it is clear that Mr. Wood—again, someone can correct me if my interpretation is wrong—has indicated to us that he has had communication with Mr. Denison. There were only five other items that were in question, and four of the five have been met. That is my understanding of it in terms of why we got here today. I do not know whether that helps you, Mr. Leone. If people have other information that indicates I am wrong, then I would like to hear from them. Mr. Pollock, you had a question.

Mr. Pollock: Yes. Are you done, Mr. Leone?

Mr. Chairman: Do you have further questions on the basis of what I said?

Mr. Leone: Yes. As I say now, we are delaying these things back and forth. I thought that at least today we would have all the materials and would expect that the groups also were in agreement, so that we could make a decision. It looks also for the other groups—after all, this action is carried on by 16 municipalities—I think these groups have already agreed to these kinds of amendments.

Mr. Chairman: Mr. Pollock?

Mr. Pollock: I did not catch one of your comments, Mr. McPhee. Did you say that the municipality could get insurance to protect any land owners



who might have claims against pollution from a landfill site? Is that what you meant?

Mr. McPhee: Protection for the municipality, liability insurance for the municipality in case a claim is made against the municipality, or the county in this situation if the county takes it over, to protect us.

Mr. Pollock: There are insurance companies that will go that route?

Mr. McPhee: Yes.

Mr. Pollock: I see. I find that a little strange. In fact, just to get back into the history of the whole procedure around here, back in the good old days when the Tories were running this province, we tried to put a landfill site in Norfolk-Halldimand. Every member of the official opposition at that time opposed that. It was a no-no. It was going to hurt the environment, everything. I think I could pull out of the Hansard a lot of the comments and read them back to you fellows. Now, all of a sudden, you are coming through with Bill 201 and we have got this private member's bill.

I put it on the record the last time that I am totally opposed to landfill sites. I will put it on the record again. Since our last meeting here, I have talked to some, I feel, knowledgeable people in the state of Michigan with regard to the incinerator in Detroit. This chap claims that if that incinerator had been built with the latest technology, it would not be causing any problem to the environment.

It was not and, therefore, people on this side of the border are still complaining about the fact that it is an environmental hazard and is causing some problems. As this gentleman said, if it had been built with the latest technology, it would not be causing any trouble. Therefore, I am still opposed to landfill sites, regardless of whether it is Bill 201 or Bill Pr78.

Mr. Chairman: Thank you. The record will indicate your comments, I am sure.

Mr. Pollock: Okay, fine.

Mr. Wiseman: Just do not move your garbage into my area.

Mr. Keyes: I am sure that Mr. Pollock will also be pleased to note, though, that within the context of this bill, it does allow for future incineration sites, perhaps future composting and all those other good things about the solid waste management that you would endorse, I am sure.

I can appreciate what Mr. Kormos and Ms. Varty have said. But not having read these amendments prior to this time—and I think that could be truly said of all of us prior to stepping into the meeting; I am sure everyone now has completely read all of them—I must remind Mr. Kormos and Ms. Varty that, as Mr. Leone said, when we were here before, concerns of the township and of the association were expressed through their solicitor and concerns were expressed within two government ministries. It was agreed that solicitors for the respective parties should then do a lot of communicating in order to try to resolve those areas of concern.

While Mr. Denison is not here today—so we may consider that we are not getting his support for it—in his letter and communications he pointed out the areas which would gain his support. Perhaps we can only slightly assume

that he was still speaking on behalf not only of Bathurst township but also of the Balderson and Area Community Association. Therefore, we have the amendments before us. If Mr. Kormos has views upon them, I suggest that now is the appropriate time that we move the amendments. We are here to deal with them. If there are concerns by Mr. Kormos or anyone else on these, I suggest we deal with each of them in turn and go back.

I appreciate and commend the association for the work it is going to do with the residents, for that is the only way that these things can become successful. But this is just a reminder that putting these into the record today, which is appropriate, and giving them some substance gives you something then to go back with and talk to your people about what has been done positively by this committee and by the solicitors on both sides in order to make it a bill that is more compatible with the wishes of the individuals. This is also a reminder that this will not get any third reading until our return in the next session. Is that right?

Mr. Chairman: No.

Mr. Keyes: How will it then be declared? Will it hopefully go in tomorrow?

Mr. Chairman: It will probably receive royal assent tomorrow.

Mr. Keyes: Oh, very good. I did not know whether you were going to get it printed in time for tomorrow. Very good.

Mr. Kormos: I beg to differ. The letter that we have from Denison of February 24 speaks of addressing his comments to the amendments, which were tabled at the committee meeting on February 15. The amendments that are before this committee and available to the community organization and its lawyer this morning, only this morning, are being interpreted as a response to that letter of February 24.

One that comes to mind right off the bat is at the bottom of page 2 and the top of page 3: the suggestion about section 14 and the procedure whereby application is to be made to a district court judge. That is a concern that was raised by Mr. Denison that is not met in the amendments that are filed this morning.

I presume there are more. Mr. Leone is operating on the presumption that these things just fall into order; that the queries were raised on February 15 and that the response by the county with respect to amendments is going to exactly meet the interests or the concerns raised by either the community organization or its counsel. That is so obviously not the case. There was no response to the suggestion by Denison about the section 14 amendment.

Mr. Chairman: Excuse me, Mr. Kormos. Perhaps before you get into that, it is my understanding—and Mr. Haggerty will speak in a moment to confirm it—that Mr. Denison was in touch with the ministry as late as yesterday and there are comments that he made yesterday. Perhaps, Mr. Haggerty, you could—

Mr. Kormos: You see, that is precisely the point. How much more is going to flow? How are these people supposed to make a meaningful contribution to this process, or indeed are they supposed to? Is it really a matter of ignoring them? Why did they waste the time coming here today? Perhaps we could pass the hat, pick up enough money to put them back on the bus, send them back and leave them there, for Pete's sake.



Mr. Chairman: If you would—

Mr. Kormos: How are they supposed to make meaningful comments if they come here and get handed a bunch of material on the morning when the representative of the community organization is here? This is going to be rammed down their throats. Are they going to say, "Yes, we had our day," not in court, but in committee? The heck they are going to be able to say that, and, quite rightly, they are not going to be able to say that. They have not had their day in committee.

1110

Mr. Chairman: Just a moment.

Mr. Wiseman: May I just say something here?

Mr. Chairman: Mr. Wiseman, hold it a moment. The fact is, Mr. Kormos, that they have been represented by counsel all the way through this process. This bill is not something that came to us this morning. They have had the content of the bill, the intention of what was going on, and the details of it outlined to them. Mr. Denison in Hansard at the last meeting has put a lot of his concerns on record.

The concerns were addressed, and they left here with the idea that they would come back addressing those concerns. Frankly, I think it is unfair to say that these people all of a sudden are having something rammed down their throats. I do not think that is the case at all. In fact, the information I have, which has been presented to you this morning, is that, with the exception of the five items, the rest of the amendments were acceptable to Mr. Denison.

If this group will tell us now that Mr. Denison did not have the authority to do that, then that is one thing, but I think it is unfair to suggest that this is being rammed down anyone's throat. On that note—you will be able to respond to everyone, Ms. Varty and Mr. McPhee, but first I will go through the members of the committee.

Mr. Smith: I was going to raise the point there that, I thought, two weeks ago, Mr. Denison was speaking on behalf of the BACA group, as well as Bathurst. If he has been negotiating on their behalf, I think they have had the opportunity to express opinions, so I do not think we are ramming anything down anyone's throat here. I just wanted to make that comment.

Mr. Wiseman: I think in Mr. McPhee's opening statement, he did say that he was on the phone a lot with his lawyer yesterday. There has been communication right up until yesterday with his lawyer. I do not think anybody, as it has been said before, is ramming anything down anyone's throat.

Being a lawyer, as I learned this morning that you were, I am sure that you would work on behalf of your clients, when you are out there, and sometimes maybe the clients found out, at the last minute, what you felt would be the best way for them to go. But when Mr. McPhee has talked with him all day yesterday, on and off as he mentioned, I think they have had lots of dialogue back and forth to know what was taking place.

These five amendments that they had here, if they were met—as the lawyers have said, they have tried to meet those where they can. I am surprised here this morning, as my colleague is, that we can get insurance for

that. I would like to know what insurance company would stick its neck out like that to take it, because I had heard that there was no insurance to take it as well.

Mr. Kormos: Ms. Varty is the best person to let us know whether anything is being rammed down anybody's throat. Sorry, Mr. Chairman.

Mr. Pollock: How much is the insurance? Do you have any idea?

Mr. McPhee: No.

Mr. Pollock: I guess that is the second question.

Mr. Chairman: Mr. McPhee, you have heard the discussions. Could we have some comment from you now, please?

Mr. McPhee: I would like to address my remarks to Mr. Keyes and Mr. Leone. Mr. Denison is our solicitor. He is representing us. In my discussions yesterday with Mr. Denison—we are not opposed to the bill, I want you to understand that, Mr. Denison as well as ourselves, but there is a certain degree of confusion as to exactly what is in the bill.

If what Mr. Denison asked for is in there, then we have no objection, but he was not sure that what he was asking for was in there. He was told it was in there. Parts of it were taken out and put back in again. Again I will state that we are not objecting. We are just asking for some time to look at the final draft, what is supposed to be a final draft, so that we can say, "Yes, our concerns are met" or "No, our concerns have not been met." There is a degree of confusion.

The last time we sat here, two weeks ago, we had 13 pages of amendments five minutes before we met, as we are meeting today. Today, we are sitting here again with another—I do not know, whatever it is—10 or 12 pages of amendments, and we are in the same position we were in two weeks ago. We think maybe our concerns have been addressed, but we would like just a short amount of time to look at what has been presented here today, so that we can be sure that what we are asking for is in fact there.

We are not trying to hold this thing up. We are working with the residents of Bathurst to try to allow this group to get on to drill. It is not a stalling tactic.

Mr. Chairman: Mr. Haggerty, do you have some comment?

Mr. Haggerty: I just want to bring to the attention of the committee that I had received a phone call—I should not say I had, but my special assistant had yesterday—from Terry Denison, the lawyer for Bathurst township, and he is opposed to some aspects of the bill.

He goes on to say that they—I do not know who he means by "they"—feel sections 13 and 14 of the bill should state "enter land with consent from registered owner and occupier." The bill gives the right now to the county officer to enter land with the consent of the occupier or the order of a court. This part has been changed back and forth. They feel that sections 13 and 14 of the bill should state, "enter land with consent from registered owner and occupier."

He is also gravely concerned about the reserve fund. Section 3 of the



act states that there will be \$1 million in a reserve fund. At the rate the township will collect this money, at approximately \$1,200 a year, it is going to take many years to acquire \$1 million. He feels it should be stated that an insurance policy of \$1 million must be purchased. I think if the committee members will look at sections 13 and 14 of the proposed amendments, they probably do meet the suggestions put forward in that phone call.

Mr. Chairman: Thank you. Ms. Varty, do you wish to say something?

Ms. Varty: There is a fundamental problem with this process. I fail to see what the harm would have been in allowing us to review these amendments before they were brought before you to waste your time today. Why could we not have been allowed to examine them, check them out and agree to disagree or whatever, before they came here? This has been the problem all along.

You talk about the steering committee representing the county and the people. The steering committee meetings were closed until we, as an association, gained access to them last fall. All of the planning in the county with respect to this waste management bill has been behind closed doors; we have not been involved. There are a large number of residents in Lanark county who are very concerned about what is going on here. I would suggest to you that the main, basic problem is trying to shove things through without allowing us the information or the time.

Again, this has been on the books for six or seven years. We are asking for another three or four weeks to speak to our residents to work up some type of co-operation. You want to shove this thing through. You want to shove it down our throats. Haste makes waste.

Mr. Chairman: Thank you, Ms. Varty. Are there any further questions of Mr. McPhee or Ms. Varty?

Mr. Wiseman: I wonder if the lawyers would maybe have a word of clarification on some of the things.

Mr. Chairman: Yes. I will ask Mr. Wood to come back. Mr. McPhee, if anything arises out of what Mr. Wood says, you will be invited back as well.

Mr. Wood: I will speak to the several points raised by the previous speakers. First, there is the matter of the insurance. Mr. Sexsmith, who I dare say has more experience in waste management matters than almost anybody else in the province—he has been involved since the early 1960s in this area—has advised the county, me and the municipalities that the kind of insurance required to safeguard against the kind of harm that the fund is set up to deal with is just not available.

If you want to hear from Mr. Sexsmith directly, he is here. He has just reaffirmed that to me. I do not know what insurance company Mr. Denison is talking to or who he is talking to. Mr. Wiseman says, "Sure, they'll say they'll give you insurance, but then they'll have a pollution exclusion in it." They just will not provide that kind of insurance. If it were as simple as getting insurance, why would we have gone through the additional difficulty of establishing a fund? That is the reason the fund is there.

If the committee is concerned about the quantum in the fund, it is quite easy for the committee members to say, "Well, let's put \$2, \$3 or \$4 per tonne into the fund." That, Mr. Sexsmith says, would not break the bank. It can be adjusted, if it satisfies the concern that the fund might not get there as

quickly as it should. But as to the insurance, it just is not available. It would be misleading to the committee to cause you to go back and introduce a provision into this requiring the county to do something which we have good reason to believe just cannot be done.

1120

On the question of who speaks for whom, I would have thought Mr. Kormos would have understood and respected the traditional role that the legal counsel plays with his client.

First, as to whether my clients, the 16 municipalities and the county, are properly advised and whether this bill meets their requirements, you can be sure that I would not be standing here in front of you asking you to adopt the bill with the amendments if I thought it did not comply with their wishes and with the intent and purpose of that legislation as they understand it. When those people came here two weeks ago, they understood what was in that bill. They sat back here and they supported it, and that was with the 13 pages of amendments.

As to whether Mr. Denison acts for these residents, I am, quite frankly, shocked this morning. Mr. Denison has never, at any time in our discussions with him, said that he no longer acts for the residents. He clearly was here representing them last week, the last time he was here. He has never said otherwise. He does not say so in his letter.

For the residents to come here this morning and say—in fact, I did not hear them say that he does not represent them any longer, interestingly enough. But even if they did, that is one of the oldest tricks in the book, for a client to appear in front of a tribunal or a court and say: "I fired my lawyer. He's not acting any more. Give me a long adjournment while I go and get somebody else to go through the process."

It is unfortunate that I have to be so blunt with you, but we have acted in good faith with Mr. Denison. We have discussed this, and my colleague Ms. Bull has been on the telephone and has urged his letter. We finally got it on Monday. We responded to the suggestions in there in good faith. We have met four out of five and we cannot meet the fifth because it involves the insurance. That is all I can say about the residents.

Second, we hear a lot from Mr. Kormos and the residents about the 13 pages of changes. How they effect the residents, I am hard pressed to understand. Let me just walk you through the new changes that are here today.

The first one on the first page involves an expanded definition of municipality, because the Ministry of Municipal Affairs folks said, "Listen, your definition of municipality does not cover regional municipalities." Do you think Mr. Denison cares about that? Do the people from Balderson care about that one?

There was a concern about the definition of waste; make sure that it just deals with municipal waste and not hazardous waste. That definition was changed, but it was here on February 15, anyway.

Let's look through to the third page. Do you know what happened on the third page? In subsection 3, under "Exclusive operation," the word "municipality" was added. So it said, "no person or municipality" shall establish a waste disposal site. Before, it said "other municipality." We have



taken a word out. Subsection 2(3a) was put in to meet Mr. Denison's requirements. In subsection 6, again, the word "municipality" was adjusted.

Are these matters of great moment to the residents or even Mr. Denison? On the assumption that they were not known to these people, you then move another three pages and you come to the reference to clause 4(1)(d). What was added there were the words "a municipality or a local board thereof." What was the concern? The ministry wanted to make sure that we could contract with a full range of people, and it thought that the language that was there before did not cover all those various bodies.

Why does the matter of contract affect the Balderson residents? Flip through another two pages. What we have is a suggestion that after the word "rates," there be added "imposing on subscribing municipalities." There was a concern to ensure that when rates are established they could be properly applied to subscribing municipalities and others. That is the rate that the municipality would contribute to the county to set up the landfill. How does that effect the Balderson residents?

Let's move through another several pages. We have to move all the way to the last suggested change. The words "without compensation" were taken out of clause 11(3)(d). That was to make sure that when assets were obtained by the county from a local municipality there was no misunderstanding that there would have to be a proper arrangement made in regard to compensation.

Lastly, we come to the issue of access to property. Mr. Denison spent a great deal of time on this issue. His recommendations, which Mr. Haggerty has spoken to this morning were, "We would like the language to say that you must obtain the consent of the occupier and the registered owner before you get access to the property." I said to the committee this morning, "Fine. Add the words 'and registered owner' to meet that concern." That is it.

We have also adjusted the bill, as was requested by Mr. Denison, to ensure that there be the necessary appeal to the Ontario Municipal Board.

This could become a never-ending circle. Mr. Denison, on behalf of the residents, suggests amendments. We propose amendments. Then Mr. Kormos says, "But we haven't had a chance to look at the amendments that are before you this morning that Mr. Denison asked for."

There has to be an end to this process. We have acted in good faith. The amendments are there to meet Mr. Denison's concerns. The other amendments suggested by the Ministry of Municipal Affairs are of a highly technical nature. None of these affects the Balderson and Area Community Association. They could look at these until they are blue in the face and not have a meaningful comment to make about them.

They said to you, "We're concerned about the planning process." I say to you that this does not affect the planning process one iota. If they are concerned it has been too slow, one of the reasons it has been too slow is that residents have said, "You can't come on our property and do testing." That slowed this process down and it is slowing it down all over the province. That is why it is slow, not because of some private bill that is before you.

This is just a number of red herrings that are being drawn across to avoid the coming to grips with the fact that this is a good bill. It will serve the purposes of the municipality and will not prejudice the residents in any way whatsoever. I urge you to support the bill.

Mr. Kormos: Mr. Wood is not telling us that Mr. Denison approved or commented on these amendments, is he? The impression we are getting is that these amendments are amendments that were approved of by Mr. Denison. If indeed Mr. Denison did, then I agree with Mr. Wood about lawyers acting for clients and being able to take their word. If Mr. Denison saw these amendments that are before us today and said, "Yes, that's it; that's all our people are interested in," then I will take Mr. Wood's say-so on that, if indeed Mr. Denison did that, and I will certainly feel obliged to back off a little.

Mr. Wood: The process that has been followed is very simply this: Mr. Denison sent a letter, which was received on Monday. We responded. Ms. Bull had a number of discussions with Mr. Denison while they discussed language—how to achieve Mr. Denison's objectives. They reached consensus on the objectives that Mr. Denison had suggested. Ms. Bull discussed with him the general language that would be necessary to achieve those objectives.

The person who actually drafts the final language and puts it into a legislative format is your legislative counsel, Ms. Mifsud. I am uncertain, but I had been led to understand that Mr. Denison had been calling everyone and that he may well have spoken with Ms. Mifsud. So there has not been any place where Mr. Denison has not touched down to follow this process. What he has said to Mr. Haggerty, which does reflect that fact, is that we had consensus on three of the five matters. We did not have consensus on the registered owner matter. He indicated to Mr. Haggerty, as he has indicated to you this morning through his client, that if the change I have indicated—the addition of the words "registered owner"—were made to subsection 13(2), then except for the insurance fund, his concerns had been met.

Mr. Kormos, what you are saying to me is, "Has he looked at the 'the's and the 'a's in the language that Ms. Mifsud has drafted?" I dare say that he has not because she drafted it after speaking with him and us yesterday. But I do say to you that the intent of his letter is met in that language.

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You had asked me one other question which I did not respond to, and that was on the notice business before going to court.

We have been through that with the Ministry of the Attorney General, legislative counsel and others, and we are told that Mr. Denison's concerns are met within existing court practice: that the notice will be given before the judge is engaged to consider the order. So, for that reason, Mr. Denison's concerns have been met in that regard as well.

Mr. Chairman: Thank you. Do you want to comment just briefly?

Mr. Kormos: Notice to the registered occupier and registered owner?

Mr. Chairman: Yes, that is the suggested amendment and counsel has indicated it can be done.

Mr. Kormos: But notice, in an application under section 14—

Mr. Keyes: Mr. Chairman, Mr. Haggerty just gave me a statement from his ministry which says that the amendment I will be proposing, which is slightly clarified from the one before you, will say "consent of the registered owner and occupier."



Mr. Kormos: But what about section 14? To whom does notice have to be given for an application to a district court judge?

Mr. Wood: In fact, what you find, Mr. Kormos, is that you serve everybody under the sun because you do not want there to be any suggestion that you have not properly notified people and your order might be deficient. I think you would know that if you are a litigation lawyer. We have checked that through our litigation lawyer.

Mr. Kormos: Do they come snottier from McCarthy and McCarthy than they do from small towns?

Mr. Wood: No.

Mr. Chairman: Mr. Kormos, let's get on with this.

Mr. Kormos: I am sorry; snottiness was not a very formal or proper word, but it expressed my sentiments.

Mr. Chairman: Yes; your apology is accepted.

Mr. Wiseman: They let lay people get away with it a little more than they do with lawyers.

Mr. Kormos: Well, I am from a small town.

Mr. Chairman: Can we carry on with the business of the committee instead of private conversations, please? Mr. Keyes, do you have anything further you wish to say?

Mr. Keyes: No; except, Mr. Chairman, I think we would be at a point in time where I think we should be ready to consider amendments.

Mr. Chairman: All right. Mr. Pollock.

Mr. Pollock: I would like to hear what Mr. Sexsmith has to say about the insurance.

Mr. Sexsmith: Mr. Chairman and members of the committee, there is no question that you could buy liability insurance on a landfill and presumably this might protect you if somebody walked on the landfill and fell down a hole. But the major anticipated damage from an unattended or improperly constructed, whatever, landfill would be pollution causing impairment of the environment in some manner. Such liability insurance, again, which you could pay for, would have in it an exclusion against pollution; i.e., you cannot collect anything on the insurance policy for the purposes that you bought it for. It does not seem to be incorrect to say that you cannot buy such insurance.

Mr. Pollock: That is my point. The only reason you would want insurance is to protect you from pollution. As far as somebody falling down through a hole, as you say, usually a person is in financial shape that he could bear that burden on his own.

Mr. Sexsmith: But all liability insurance contains a standard pollution exclusion now.

Mr. Pollock: Okay; that is what I wanted on the record.

Mr. Chairman: Fine. I would like to ask Mr. McPhee and Ms. Varty if they would like to come back and indicate whether they have any comments based on what was said up until now. Ms. Varty?

Ms. Varty: Thank you. Mr. Wood, you insult my intelligence by indicating that we would not be able to read and understand the amendments. We go through these things with a fine-toothed comb and we are concerned about what happens in our community.

Again, we are not trying to stop a bill or some type of legislation from going through. I understand we are the first county—is that right?—to have a private member's bill with respect to waste management. The input is all we are asking for; and Mr. Wood, we do have the intelligence to understand the legislation and what is going on.

Mr. Chairman: Ms. Varty, I do not want to have a conversation going on between you and Mr. Wood. Do you have any other comments you would like to make?

Ms. Varty: Well, Mr. Wood made a comment to that effect; I feel I should have the time to reply.

I would like to also say that we are trying to work with the residents whose properties are being affected. We are trying to understand what is happening here. Again, it has been a process that we have not been pleased with or with the fact that we have not been involved all along.

We forced our way into the steering committee meetings in the fall. If we had been involved all along, we probably would not be at stage now. I would like the committee to think about that in terms of future presentations and projects that are made.

Mr. Chairman: Thank you. I am sorry. Could you hold it just a minute? Ms. Varty, could you come back? Mr. Pollock may have a question.

Mr. Pollock: It is just a point of clarification. I thought Mr. Wood said Mr. Denison was no longer your lawyer. Is that right?

Mr. Keyes: No.

Mr. Chairman: No, he did not say that at all.

Mr. Pollock: Okay; I am sorry about that then. I thought that was what he indicated, that it was a stalling tactic.

Mr. Chairman: No, that is not what he indicated.

Mr. Pollock: I am sorry about that.

Mr. Chairman: He indicated to the contrary. He indicated he was still the counsel.

Mr. Pollock: Okay; fine. I just wanted that clarified.

Ms. Varty: I think Mr. McPhee indicated that Mr. Denison is hired by Bathurst township and that the last meeting he attended here on the 15th was



as a representative of the township. At that point, we were in agreement with the submissions that were being made, but he is hired by the township.

Mr. Pollock: Okay; fine. Thank you.

Mr. Chairman: He represented both parties here last time.

Mr. Kormos: He does not represent this community group now, though.

Mr. Chairman: He was the one who was here representing both groups at the last hearing. He was also the one who conducted the negotiations on behalf of the group up until yesterday.

Ms. Varty: On behalf of the township.

Mr. McPhee: On behalf of the township.

Mr. Kormos: Was he acting on behalf of the group yesterday or not? I think we should know that.

Mr. Chairman: He was acting on behalf of the group when he was here the last time, as Hansard indicated he said. All the indications we have are that he was acting on behalf of everyone.

Mr. Kormos: Well, was he yesterday?

Mr. Smith: (Inaudible) to say that he is not representing the group. I do not know how we can think anything different.

Mr. Chairman: You are right. There is no indication that he is not, so we must assume he is.

Mr. Wood: I just wanted to make clear to the committee and also to Ms. Varty that I was not intending, and if I did I apologize, to insult her intelligence. What I thought I had said was that the changes were of such a nature that they would not have had an effect on the residents and that they could have looked at them at any time, but that they in effect would draw the same conclusion, that it did not affect their interest. I certainly respect the residents' group and their capacity to participate.

Mr. Chairman: Thank you for that clarification. Are there any further questions?

All right, the matter before us is Bill Pr78, An act respecting the County of Lanark.

Section 1:

Mr. Chairman: Mr. Keyes moves that section 1 of the bill be amended:

(a) by adding thereto the following definitions:

"'commercial motor vehicle' means a motor vehicle having permanently attached thereto a truck or delivery body;

"RSO 1980, c. 303

"'municipality' means a municipality as defined in the Municipal Affairs

Act, and a metropolitan, regional or district municipality, and the county of Oxford or a local board of a metropolitan, regional or district municipality or of the county of Oxford"; and

(b) by striking out the definitions of "waste" and "waste disposal facility" and substituting the following therefor:

"'waste' means ashes, garbage, refuse, domestic waste, industrial solid waste and such similar waste as may be designated by bylaw of the county";

"RSO 1980, c. 303

"waste disposal facility" means a site and the facilities constructed thereon for the disposal or management of waste that are subject to approval under the Environmental Protection Act and includes a landfill site, composting site and incinerator;

(c) by striking out "to a waste management system" in the sixth and seventh lines of the definition of "waste management system."

Are there any questions on the amendment? Shall the amendment carry? Carried.

Shall section 1, as amended, carry? Carried.

Mr. Kormos: Mr. Chairman? Opposed, please?

Mr. Chairman: All right, we will call a vote. All those in favour? All those opposed?

Motion agreed to.

Section 1, as amended, agreed to.

Section 2:

Mr. Chairman: Mr. Keyes moves subsection 2(2) of the bill be struck out and the following substituted therefor:

"(2) Despite subsection (1), the subscribing municipalities shall continue to provide waste disposal facilities until the county council passes a bylaw stating that the county has established and is ready to operate and manage a waste management system for the waste management service area."

Shall the amendment carry? Same vote?

Motion agreed to.

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Mr. Chairman: Mr. Keyes, there are two other amendments to section 2; there is subsection 2(3).

Mr. Keyes: Yes, subsection 2(3).

Mr. Chairman: Perhaps we could get them all at the same time.



Mr. Keyes: Do you want them all together? All right.

Mr. Chairman: Mr. Keyes moves that subsection 2(3) of the bill be struck out and the following be substituted therefor:

"Exclusive operation

"(3) When a bylaw is passed under subsection (2), no person or municipality shall establish a waste disposal facility in the waste management service area without the consent of the county council, which consent may be given upon such terms, including the payment of compensation, as may be agreed upon.

"Appeal to OMB

"(3a) If the county council refuses its consent under subsection (3) or the applicant and the county council fail to agree on the terms and conditions related to the consent, the applicant may appeal to the municipal board which shall hear and determine the matter, and may impose such terms and conditions as the municipal board considers appropriate and the decision of the municipal board is final."

Shall the amendment carry on the same vote?

Motion agreed to.

Mr. Chairman: Mr. Keyes moves that subsection 2(6) of the bill be struck out and the following substituted therefor:

"Existing contracts

"(6) Nothing in this act affects any contract for the disposal of waste that exists on the day this act comes into force between any person or municipality and a subscribing municipality but the county and the subscribing municipality may enter into an agreement whereby the county assumes all or part of the benefits and liabilities created by such contract in respect of the disposal of waste."

Shall the amendment carry on the same vote?

Motion agreed to.

Mr. Chairman: Shall the section, as amended, carry on the same vote?

Section 2, as amended, agreed to.

Mr. Chairman: I will be calling "same vote." If anybody wants to change that he can indicate by waving.

Section 3:

Mr. Chairman: Mr. Keyes moves that section 3 of the bill be amended by adding thereto the following subsections:

"Establishment of reserve fund

"(6) When a bylaw is passed under section 2, the county council shall establish a reserve fund in regard to a discharge of a contaminant to the

environment from a waste disposal facility of a subscribing municipality which may occur after the facility has ceased operation and has closed.

"Funding the reserve fund

"(7)The county council shall deposit in the reserve fund \$1 for each tonne of waste received at its waste disposal facilities or such greater amount per tonne as the county council may determine until the fund is equal to \$1 million or such greater amount as the county council may determine.

"Alternative methods of funding

"(8)The county council may contribute to the reserve fund such additional amounts and through such means as it, in its sole discretion, decides.

"Investments and income

"(9) The money deposited in the reserve fund shall be paid into a special account and may be invested in such securities as a trustee may invest under the Trustee Act, and the earnings derived from the investment form part of the reserve fund.

"Application to fund

"(10) Upon the application of a subscribing municipality, the county council shall reimburse the subscribing municipality from the reserve fund in respect of money paid by the subscribing municipality attributable to any discharge of a contaminant to the environment from a waste disposal facility of the subscribing municipality which occurs after the facility has ceased to be used by such municipality and has been closed.

"Disagreement referred to OMB

"(11) If there is a disagreement between the county and a subscribing municipality as to whether the amount sought to be collected from the reserve fund is properly attributable to a discharge of a contaminant to the environment from a waste disposal facility of a subscribing municipality, the county or the subscribing municipality may refer the matter to the Ontario Municipal Board and the decision of the municipal board is final.

"Restriction on county obligation

"(12) The obligation of the county council to a subscribing municipality under subsection (10) is restricted to the amount of moneys in the reserve fund at the date of the application made under subsection (10).

"Maintaining the fund

"(13) If a payment is made by county council under subsection (10) before the reserve fund contains at least \$1 million, the obligation of the county council under subsection (7) continues.

"Idem

"(14) If a payment is made by county council under subsection (10) after the reserve fund contains at least \$1 million and the payment results in the reserve fund containing less than \$1 million, the county council shall



re-establish the reserve fund at \$1 million by depositing in the fund moneys at the rate of \$1 per tonne of waste received at its waste disposal facilities or such greater amount per tonne as the county council may determine."

Same vote?

Motion agreed to.

Section 3, as amended, agreed to.

Section 4:

Mr. Chairman: Mr. Keyes moves that subsection 4(1) of the bill be amended by striking out clauses (d) and (e) and inserting in lieu thereof the following:

"(d) contract with Her Majesty in right of Canada, Her Majesty in right of a province, any agency of either of them, a municipality or local board thereof; and

"(e) provide standards and regulations for commercial motor vehicles, or any class thereof, used for the haulage of waste to a waste disposal facility."

Same vote?

Motion agreed to.

Mr. Keyes: Just for the sake of the record for the people, there is a little sub that got added in there that threw me off as well in both of these sections.

Mr. Chairman: Mr. Keyes moves that subsection 4(2) of the bill be struck out and the following substituted therefor:

"Application of RSO 1980, c. 302

"(2) For the purposes of this act, paragraph 84 of section 210 of the Municipal Act applies, with necessary modifications, to the county."

Same vote?

Motion agreed to.

Section 4, as amended, agreed to.

Sections 5 to 7, inclusive, agreed to.

Section 8:

Mr. Chairman: Mr. Keyes moves that subsection 8(1) of the bill be amended by inserting after "system" in the seventh line "and any programs established under section 5 or 6."

Same vote?

Motion agreed to.

Mr. Chairman: Mr. Keyes moves that subsection 8(3) of the bill be

amended by inserting after "rates" in the first line "imposed on subscribing municipalities."

Same vote?

Motion agreed to.

Section 8, as amended, agreed to.

Section 9:

Mr. Chairman: Mr. Keyes moves that subsection 9(1) of the bill be amended by striking out "vehicles" in the fourth line and inserting in lieu thereof "commercial motor vehicles."

Same vote?

Motion agreed to.

Mr. Chairman: Shall section 9, as amended, carry on the same vote?

Section 9, as amended, agreed to.

Section 10:

Mr. Chairman: Mr. Keyes moves that subsection 10(1) of the bill be struck out and the following substituted therefor:

"Land use disposal bylaws, RSO 1980 1980, c. 302

"(1) No subscribing municipality shall exercise the powers granted under clause (a) of paragraph 129 of section 210 of the Municipal Act."

Same vote?

Motion agreed to.

Mr. Chairman: Mr. Keyes moves that subsection 10(2) of the bill be amended by adding at the end thereof "in regard to waste."

Same vote?

Motion agreed to.

Section 10, as amended, agreed to.

Section 11:

Mr. Chairman: Mr. Keyes moves that clause 11(3)(d) of the bill be amended by striking out "without compensation" at the end thereof.

Same vote?

Motion agreed to.

Section 11, as amended, agreed to.



Section 12 agreed to.

Section 13:

Mr. Keyes: This is the one that is not before you. I will make an additional amendment to it, so you can just take it all as I read it.

Mr. Chairman: Mr. Keyes moves that section 13 of the bill be struck out and the following substituted therefor:

"Powers

"13(1) Where under the Planning Act, the Municipal Act, the Environmental Assessment Act, the Environmental Protection Act, the Ontario Water Resources Act, the Expropriations Act, or any other provincial statute, it is necessary to satisfy any requirement of the act or to obtain any approval relating to the establishment, operation and management of a waste management system or any part thereof, a county officer may exercise the powers in subsection (2) for the purpose of satisfying that requirement or obtaining that approval.

"Idem

"(2) For the purposes set out in subsection (1), a county officer, with the consent of the registered owner and occupier or pursuant to an order made under section 14,

"(a) may enter any place at any reasonable time;

"(b) may conduct surveys, examinations, investigations, tests and inquiries be conducted;

"(c) may require that surveys, examinations, investigations, tests and inquiries be conducted;

"(d) may make, take and remove any samples or extracts;

"(e) may require the making or taking of any samples or extracts; and

"(f) may record or copy information by any method.

"Proof of identity

"(3) When carrying out his or her duties under this act, a county officer shall provide identification and authorization upon request."

Same vote?

Motion agreed to.

Section 13, as amended, agreed to.

Section 14:

Mr. Chairman: Mr. Keyes moves that section 14 of the bill be struck out and the following substituted therefor:

"Order authorizing entry

"14 (1) Upon application by the county to a judge of the district court, the judge may make an order authorizing the county officer named in the order to enter the land specified in the order, where there is reasonable ground to believe that the land may be suitable for a waste management system or any part thereof and it is necessary to gain entry to the land for the purposes set out in subsection 13(1) and the county officer has been denied entry on to the land or has been prevented from exercising his or her powers under this act.

"Contents of order

"(2) The order may,

"(a) authorize the county officer to do anything set out in section 13 and specified in the order;

"(b) authorize the county officer to use force in carrying out the order as is reasonable in the circumstances; and

"(c) impose other terms, including the payment of compensation, as are just.

"Execution of order

"(3) The order shall specify the hours and days during which it may be exercised and the date on which it expires."

Same vote?

Motion agreed to.

Section 14, as amended, agreed to.

Sections 15 and 16 agreed to.

Mr. Pollock: Before it is finalized, I would like to put on the record that I abstained from voting for the simple reason that I do not believe in landfill sites. Recycling consideration should be in the—

Mr. Chairman: The record will indicate Mr. Pollock has abstained.

Same vote?

Preamble agreed to.

Title agreed to.

Bill, as amended, ordered to be reported.

Mr. Chairman: Thank you very much. This bill will be reported this afternoon. I assume it will be ready for tomorrow. I do not know.

There is one other thing, members of the committee. You have all received copies of the government's response to the last report of this committee. We would like to deal with that at some time when we get back. If



anyone has any comments or suggestions as to how you would like to proceed, I would like to hear from you in the interim.

Mr. Wood: Mr. Chairman, I would like to thank you for your and the members' kind consideration for reconvening this morning. I realize it was at some inconvenience to you and I must say I very much appreciate that on behalf of the county.

Mr. Chairman: Thank you for appearing. Thank you also, Ms. Varty and Mr. McPhee, for appearing today.

The committee adjourned at 11:53 a.m.

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